

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No. 5:12-CV-00610-F

C O P Y

CITY GRILL HOSPITALITY GROUP, INC., )  
  )  
  Plaintiff, )  
  )  
vs.                                       )  
  ) D E P O S I T I O N  
NATIONWIDE MUTUAL INSURANCE COMPANY, )  
  )  
  Defendant. )  
-----)

---

STEVEN CLAY BOOTH

---

202 Fairway Drive  
Fayetteville, North Carolina

Friday, August 16, 2013  
10:13 o'clock a.m.

---

Atlantic Professional Reporters  
Winston-Salem, NC 27116-1672

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## NOTES

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## STIPULATIONS

2

Pursuant to notice and/or consent of the parties, the deposition hereon captioned was conducted at the time and location indicated before Cassandra J. Stiles, Notary Public in and for the County of Forsyth, State of North Carolina at Large.

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The deposition was conducted for use in accordance with and pursuant to the applicable rules or by order of any court of competent jurisdiction.

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1                   The witness, STEVEN CLAY BOOTH, being  
2 first duly sworn to state the truth, the whole truth  
3 and nothing but the truth, testified as follows:

4                   (10:13 o'clock a.m.)

5                   EXAMINATION

6 BY MS. DALY:

7 Q. Good morning, Mr. Booth.

8 A. Good morning.

9 Q. My name is Rachel Daly and I've been  
10 retained by Nationwide.

11                  Just a few rules, since you've been  
12 deposed before.

13                  If you need a break, let me know. If you  
14 don't understand my question, please let me know and  
15 I'll rephrase it. Okay?

16 A. Okay.

17 Q. Will you state your full name for the  
18 record?

19 A. Steven Clay Booth.

20 Q. I have a copy of your CV. And I'm going  
21 to ask you just to quickly take a look at it to tell  
22 me if this is your most recent version.

23                  It is the one I will tell you that was  
24 submitted to us along with your expert report.

25 A. Okay. I think there's an updated version.

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1 I don't think that it has anything other to do --  
2 yeah, I -- no. That's -- this is updated.

3 Q. Okay.

4 A. This is updated.

5 Q. Perfect. Let's quickly walk through your  
6 background.

7 After high school it looks like you went  
8 to Elon College?

9 A. Uh-huh.

10 Q. Did you graduate with any type of degree  
11 from Elon?

12 A. No, ma'am.

13 Q. Did you -- how long did you attend Elon  
14 College?

15 A. It was a -- a year.

16 Q. And then when you left after a year, it  
17 looks like you went to the Police Academy ---

18 A. --- Uh-huh.

19 Q. --- For Fayetteville. Is that correct?

20 A. That's correct.

21 Q. Okay. It looks like your training -- when  
22 did your training for fire investigations start?

23 A. I believe it was in 1997.

24 Q. And was that on-the-job training at the  
25 Fayetteville ---

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1           A. --- That and ---

2           Q. --- Police department?

3           A. That and in various law enforcement  
4 training that we had as far as from the Justice  
5 Academy or the National Fire Academy.

6           Q. Will you go through your training  
7 specifically to fire investigation for me?

8           A. Okay. It's outlined in my CV. Have you  
9 got a copy of it? I'll go through it with that. I  
10 can't remember exactly every one of them. They're  
11 all in there.

12          Q. Okay. Were any of these training for fire  
13 investigation -- did any of them deal with electrical  
14 failure?

15          A. I think several of them did discuss ---

16          Q. --- Okay.

17          A. --- Excuse me -- electrical failures.

18          Q. Okay, they discussed it. But did you  
19 actually have training in electrical failure?

20          A. As far as?

21          Q. Specific to electrical failures.

22          A. Electrical sources of ignition?

23          Q. Uh-huh.

24          A. I don't think I've had a class that  
25 specifically related to electrical failures other

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1 than on-the-job training with the engineers that I  
2 work with.

3 Q. Okay. And so that we're clear, you're not  
4 an engineer.

5 A. No, ma'am.

6 Q. And you're not a mechanical engineer.

7 A. No, ma'am.

8 Q. You're not an electrical engineer.

9 A. No, ma'am.

10 Q. Am I correct that you are not qualified --  
11 that -- strike that.

12 Was Mr. Stone retained by plaintiff in  
13 this case to determine whether there was an  
14 electrical failure?

15 A. He was retained to examine the evidence  
16 that was re -- recovered or was present.

17 Q. And was he specifically to focus on  
18 whether or not there was an electrical failure in  
19 this case?

20 A. If there was an electrical failure there,  
21 yes. If there was some other type of issue ---

22 Q. --- Okay.

23 A. --- Then he would be looking at that. But  
24 it was specifically to examine the evidence that was  
25 collected.

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1           Q.     Okay. And are you qualified to determine  
2 whether or not there was an electrical failure?

3           A.     I'm qualified to determine the origin and  
4 cause of a fire. And if there's a source of  
5 electrical ignition that I believe is the cause, then  
6 I would hire someone else to do that.

7           Q.     Okay. You would make -- not make that  
8 determination.

9           A.     No, ma'am.

10          Q.     Is that correct?

11          A.     I would not make the final determination,  
12 no.

13          Q.     Okay. And so in this case would Mr. Stone  
14 make that final determination?

15          A.     Yes. If he was the engineer that we had  
16 hired to do that, he would be the one to make the  
17 final determination, yes.

18          Q.     Well, not if. He was.

19          A.     He was one of them, yes.

20          Q.     Okay. Are you saying ---

21          A.     Well, and ---

22          Q.     --- There's another?

23          A.     There's -- there was a article that we  
24 found, a -- a ---

25          Q.     --- Now, let's answer my question first

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1 and then we can get to that.

2 Was Mr. Stone the expert who was retained  
3 in this case to determine whether or not there was an  
4 electrical failure?

5 A. Yes.

6 Q. Okay. And if you want to add something to  
7 it -- you were talking about an article.

8 A. There was an article, a report that we  
9 found. And it was my understanding that that expert  
10 that wrote that report was consulted by the counsel.

11 Q. Okay.

12 A. And that there is a report that he wrote  
13 that is included in these documents here.

14 Q. Okay, and what is the name of -- you're  
15 saying two different things. You're saying that  
16 someone wrote an article and someone wrote a report.

17 A. There is a study that was an article that  
18 I found. The individual that wrote that, his name is  
19 Jim Small. And it's my understanding from the  
20 documents that I have in there a report -- or a  
21 letter was written to counsel for this case in  
22 regards to that report and low-voltage ignition of  
23 electronics.

24 Q. Okay, a letter written to counsel  
25 regarding the report or a letter written to counsel

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1       regarding the article? You just said regarding the  
2 report, so I'm wondering what you're saying.

3           A. There's -- there's two actually. There's  
4 a letter in there that was regarding his report and  
5 then there's also questions answered about photos  
6 that he reviewed from this case.

7           Q. Okay, and when were you given that letter?  
8                   Is this your original file here?

9           A. This is, yeah.

10          Q. Okay.

11          A. All of this is. These are documents that  
12 I was provided during discovery. They're all things  
13 that you all had provided. And this is stuff here  
14 that is already in the documents that were provided,  
15 the fire report, the CAD report, the emails.  
16 Everything that's in here from this has already been  
17 copied and included. It's not in that.

18          Q. Okay.

19          A. It is in those doc ---

20          Q. --- Then let me go ahead and have this,  
21 please. Thank you.

22                   Okay, so let's finish up with this  
23 question and then I'll go through these documents.

24                   So you said there was a letter written to  
25 counsel.

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1           A.     Uh-huh.

2           Q.     Okay, and it references first an article  
3     that was written by Mr. Small. Is that correct?

4           A.     Yeah. It's a report that he did about  
5     electrical -- it's low-voltage electrical ignition.

6           Q.     Okay. A report for this case or a report  
7     that he has written for another case?

8           A.     Mr. Small did a study ---

9           Q.     --- Uh-huh.

10          A.     --- On electrical ---

11          Q.     --- Okay. You keep calling it an article  
12     and a report. So I'm trying to differentiate. A  
13     report has a specific meaning under the federal  
14     rules. So it's a federal expert report. So if we  
15     can call -- if he did a federal expert report in this  
16     case, it has not been produced to us, if we can  
17     reference that as a report. If we can reference a  
18     letter that was simply a letter written to either you  
19     or to counsel, or if it's a article that was written  
20     on a study that he did -- so that I am clear as to  
21     what you're referencing.

22          A.     There is a study that he did for another  
23     organization.

24          Q.     Okay.

25          A.     Okay.

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1           Q.    And what was the name of that  
2 organization?

3           A.    I'd have to look at the report to tell  
4 you.

5           Q.    Okay, and do you have a copy of the report  
6 in your file?

7           A.    It's in that right there.

8           Q.    It's in this one. Okay.

9           A.    Okay. What was your next question?

10          Q.    You said -- okay, so he did an arti -- he  
11 wrote an article. And that's what's in here. And so  
12 that's how you found his name. You came across this  
13 individual's name in an article.

14          A.    Yes.

15          Q.    Okay, and so you read this article. And  
16 what did you do after you read the article?

17          A.    I consulted with counsel and told them  
18 what I had found.

19          Q.    Okay, and what did you tell them that you  
20 found?

21          A.    I told them that I found a document on the  
22 Internet that was written by Jim Small from Kodiak  
23 Consulting that was specifically about low-voltage  
24 electrical ignition. And I provided them a copy of  
25 the document.

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1 Q. And when did you do this?

2 A. I'd have to go back through my emails  
3 exactly to tell you. But it was within the past  
4 couple of weeks ---

5 Q. --- Okay.

6 A. --- Before this deposition.

7 Q. So it was in the past couple of weeks.

8 A. Yes.

9 Q. Okay. What made you search for this  
10 article?

11 A. The reports, the rebuttal reports written  
12 by Mr. Martini and Mr. Lacy.

13 Q. Okay. Well, do you mean their federal  
14 expert report?

15 A. Their second report that they wrote, yes.

16 Q. Okay. Well, they've only filed one  
17 federal expert report in this case.

18 A. Okay. Well, there are two reports, one  
19 submitted to Nationwide ---

20 Q. --- Okay.

21 A. --- And then another one that's submitted  
22 for this.

23 Q. Right. Okay, so their federal expert  
24 report would have been the report that was submitted  
25 in this litigation ---

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1           A. --- That's the one that I got that  
2 information off of, yes.

3           Q. Okay, so they submitted that report. And  
4 then after -- and then at that point in time was Mr.  
5 Stone already retained?

6           A. Yes.

7           Q. Okay. Okay, and what are the credentials  
8 of Mr. Small?

9           A. He's an electrical engineer.

10          Q. Okay. Okay, and so within the past couple  
11 of weeks you were searching the web and you found  
12 this article.

13          A. It may have been three weeks ago ---

14          Q. --- Okay.

15          A. --- But yes.

16          Q. And what caught your eye is that it was an  
17 article written about low-voltage electrical engine  
18 -- ignition.

19          A. Yes.

20          Q. Okay, and then you brought that to Mr.  
21 Wiggins' attention.

22          A. That's right.

23          Q. Is that correct? Okay, and so what did  
24 you tell Mr. Wiggins?

25          A. I told him that I had found an article

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1       that related to low-voltage ignition of printed  
2       circuit boards and that I thought that it would be  
3       interesting for him to take a look at it.

4           Q.    Okay, and then what happened?

5           A.    And then he read it and we talked about  
6       consulting with Mr. Small.

7           Q.    And where is Mr. Small located?

8           A.    I believe he -- it's Illinois.

9           Q.    Okay. And when you say you consulted with  
10      him, did you actually go to Illinois or did you meet  
11      him in person?

12          A.    No, I did not.

13          Q.    Okay. So what happened after -- did you  
14      actually make the phone call? Were you with counsel  
15      when you made the phone call?

16          A.    No. I called him to talk to him about the  
17      study and find out what it was all about as far as  
18      the -- you know, how he -- whether it was peer  
19      reviewed first.

20          Q.    Uh-huh.

21          A.    And then, second, to find out what it is  
22      that he did, that I didn't understand, and to kind of  
23      get it in layman's terms as to what it was that he  
24      had done. And that was about it. And then I  
25      contacted counsel and let them know and let them go

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1 from there with it, to contact him themselves.

2 Q. Okay. So when you read the article, so  
3 that I'm clear, you had to contact him and to get a  
4 clarification of exactly what he was talking about in  
5 this article.

6 A. Yeah. It -- it ---

7 Q. --- Is that correct?

8 A. Yes. My understanding was is that it was  
9 discussion of class-two power supplies which had been  
10 referenced in Mr. Martini's report.

11 Q. Uh-huh.

12 A. That's how I found it, was with -- by  
13 searching that. And the title of the report was  
14 Low-Voltage Ignition. The -- it's -- what -- what  
15 did he say -- the -- the incompetent ignition source  
16 and common misconception, or something like that. I  
17 don't remember exactly what the -- the title of it  
18 was. But that's how I found it. And then I  
19 contacted them, contacted him, and they went from  
20 there.

21 Q. Okay. So before we get into any more  
22 discussions with him, did you also let Mr. Stone, who  
23 is the engineer that's already retained in this case  
24 -- did you already let -- did you let him know about  
25 this article?

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1           A. I did.

2           Q. Did he speak with Mr. Small?

3           A. No, not that I'm aware of.

4           Q. Did you have Mr. Stone explain to you the  
5 article?

6           A. We talked about it but he didn't go into  
7 any further detail about it. He actually suggested  
8 at that point that we consult with Mr. Small.

9           Q. Okay, and why did he suggest you consult  
10 with Mr. Small?

11          A. I don't know. You'll have to ask him.  
12 That's what he suggested. I didn't ask him why.

13          Q. Okay. And that's all I'm asking, is your  
14 conversations with Mr. Stone about this article.

15           So what exactly was said about this  
16 article?

17          A. What I have said or what he have said?

18          Q. Both of you.

19          A. Umm, that it was an interesting arti --  
20 article, it may have had some merit, that we needed  
21 to talk with the actual person that wrote it.

22          Q. Okay. And you mentioned earlier you  
23 wanted to find out if it was peer reviewed. Was the  
24 article peer reviewed?

25          A. Not in the -- not in the fire community,

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1 not that I'm aware of. But it was written for an  
2 organization or manufacturer of small electronics.

3 Q. Okay, so to your knowledge, it has not  
4 been peer reviewed.

5 A. To my knowledge.

6 Q. Okay. Any other discussion with Mr. Stone  
7 regarding ---

8 A. --- No.

9 Q. --- This article?

10 A. No.

11 Q. And did you ever talk to Mr. Stone after  
12 you contacted Mr. Small?

13 A. Yes. I believe we've talked about ---

14 Q. --- And....

15 A. I believe we've talked about my  
16 conversation with Mr. Small and Mr. Small indicating  
17 that -- that a class-two power supply and the PCB  
18 don't always operate in the parameters that are  
19 outlined and that there is a potential for ignition.  
20 And that's all that I got from Mr. Small.

21 Q. Okay. So when you say there's a potential  
22 for ignition -- have you read Mr. Stone's report?

23 A. Mr. Stone's? I don't actually think that  
24 I have a -- a copy of his report, to tell you the  
25 truth. I don't -- I don't have a copy of that. It

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1 -- it's not in my -- I don't -- I don't think I have  
2 a copy of his report.

3 Q. Okay. So it's your testimony that you've  
4 never read Mr. Stone's report?

5 A. No, I haven't read his report.

6 Q. Okay. Have you talked to Mr. Stone about  
7 his opinions in this case?

8 A. I have.

9 Q. Okay, so are you aware of his opinions in  
10 this case?

11 A. Yes.

12 Q. Okay. So -- and what did Mr. Stone tell  
13 you that his opinions were in this case?

14 A. That we didn't find any source of ignition  
15 on the branch circuitry or any of the evidence that  
16 we were -- we examined at Mr. Cavarock's office.

17 Q. Okay, let's stop there and I'm going to --  
18 I'll break it up.

19 A. Okay.

20 Q. Do you have any evidence or any reason to  
21 disagree with Mr. Stone's finding?

22 A. No.

23 Q. With what he just said. Okay, so continue  
24 to your next....

25 A. Okay. After the evidence exam, anything

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1       outside of that would include the overhead branch  
2       circuitry that was not included, meaning the lights,  
3       the fluorescent lights ---

4           Q.     --- Uh-huh.

5           A.     --- And the circuit board, printed circuit  
6       board that is in some of the photographs. He had  
7       indicated that he could not eliminate it because he  
8       could not examine it.

9           Q.     Okay. Have you read Mr. Stone's  
10      deposition?

11          A.     I have not.

12          Q.     Okay. If Mr. Stone testified that he  
13      ruled out the lighting as a potential source of  
14      ignition ---

15          A.     --- Uh-huh.

16          Q.     --- Do you have any reason to disagree  
17      with his testimony?

18          A.     No, ma'am.

19          Q.     And really what I'm trying to do right now  
20      is try to figure out kind of where your bucket is and  
21      where Mr. Stone's bucket is. So if Mr. Stone has an  
22      opinion regarding an electrical source of ignition  
23      for this fire, do you have any evidence to disagree  
24      with Mr. Stone's findings or would you rely on Mr.  
25      Stone's findings for anything regarding an electrical

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1 failure, an electrical source of ignition? Would  
2 that be what -- would you use Mr. Stone's opinions to  
3 rely on?

4 A. I would.

5 Q. Okay. Then that will cut out a whole lot  
6 of questioning, then, today.

7 Okay, so please continue with what else  
8 Mr. Stone told you regarding his opinions, if  
9 anything. You might have covered it.

10 A. I think I've covered it.

11 Q. Okay.

12 A. However, just to -- to recap, we've  
13 already -- we've just discussed the overhead  
14 lighting.

15 Q. Uh-huh.

16 A. We've discussed this -- the collection --  
17 their collected items at Mr. Cavarock's office.

18 Q. Uh-huh. And that was all ruled out.

19 A. Yes, ma'am.

20 Q. That there was -- that was not a source of  
21 ignition.

22 A. None of the items ---

23 Q. --- Correct?

24 A. --- That we looked at there.

25 Q. Okay.

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1           A.     That's correct. And ---

2           Q.     --- Continue.

3           A.     And we discussed the presence of the  
4     printed circuit board that belonged to -- or what we  
5     believe belonged to the Ion IQ intercom system.

6           Q.     Uh-huh. Okay, I'm going to ask you to  
7     take a moment and read Mr. Stone's report ---

8           A.     --- Okay.

9           Q.     --- Since you've not done so thus far and  
10    tell me if there is anything in Mr. Stone's report  
11    that you disagree with.

12          A.     Okay.

13          Q.     Okay.

14                 (Witness examined document)

15                 MS. DALY: We can go off the record.

16                 (10:33-10:36 a.m. - recess)

17                 MS. DALY: Okay, we can go back on  
18    the record.

19          Q.     (Ms. Daly) Mr. Booth, did you have an  
20    opportunity to read Mr. Stone's report in this case?

21          A.     Yes, ma'am.

22          Q.     Is there anything contained in this report  
23    that you disagree with?

24          A.     No.

25          Q.     Okay. So Mr. Stone testified that the

Page 25

1 printed circuit boards were visually consistent with  
2 an appearance with a base containing multiple circuit  
3 boards comprised of a single large board and several  
4 smaller boards. I assume you agree with that.

5 A. Yes.

6 Q. And that that -- those shapes and  
7 dimensions were consistent with the HME Ion IQ.

8 A. Yes.

9 Q. Okay. And for ease today, if we can call  
10 that the wireless device during this deposition, if  
11 that works for you.

12 A. You name it and that will be fine.

13 Q. Okay. So Mr. Stone's first opinion is  
14 that the circuit boards were consistent with this  
15 wireless device. Correct?

16 A. Yes.

17 Q. And then his second was -- one of his  
18 other opinions was that his examination of the  
19 electrical wiring components contained with exhibits  
20 presented did not reveal any discernible evidence of  
21 a potential fire-causing failure or defect. And you  
22 agree with that.

23 A. Yes.

24 Q. And Mr. Stone said -- testified that the  
25 wireless device -- well, actually, strike that.

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1                   In his report Mr. Stone did not state  
2 anything about whether or not this wireless device  
3 caused the fire. Is that correct?

4                   A. Yes.

5                   Q. Did Mr. Stone ever talk to you about  
6 whether or not he believed the wireless device caused  
7 the fire?

8                   A. No.

9                   Q. Did you ever ask him?

10                  A. Yes.

11                  Q. Okay, and what did he tell you?

12                  A. He said that he could not say whether or  
13 not it started the fire.

14                  Q. Okay. Are you able to testify that the  
15 wireless device caused the fire?

16                  A. No.

17                  Q. Okay. Are you able to testify that the  
18 wireless device -- strike that.

19                  Are you able to testify that it is more  
20 likely than not that the wireless device caused the  
21 fire?

22                  A. No.

23                  Q. If you are asked under oath to testify  
24 regarding the wireless device, what is your opinion  
25 regarding whether or not it was the ignition source

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1 for this fire?

2 A. Now you're -- okay, just to be clear,  
3 you're asking me to answer that question as to  
4 whether or not I believe it could be the cause of the  
5 fire or could not?

6 Q. No. I'm asking you as the  
7 cause-and-origin expert -- right now what I'm trying  
8 to figure out is where does your testimony end and  
9 Mr. Stone's pick up.

10 A. Oh.

11 Q. So for you, as the cause-and-origin  
12 expert, when you are called to testify in this case,  
13 what is your testimony regarding whether the wireless  
14 device was the ignition source for this fire?

15 A. I would say that I don't know whether it  
16 was or not.

17 Q. Okay. And is that because you would rely  
18 on Mr. Stone's evaluation of whether or not the  
19 wireless device was the ignition source or is it  
20 because based on your own experience you can't  
21 determine whether or not the wireless device was the  
22 ignition source for the fire?

23 A. It would be both.

24 Q. Both. Okay, is it your opinion that it is  
25 more likely than not that there was an electrical

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1 failure that was the ignition source to this fire?

2 A. No.

3 Q. Other than the wireless device, do you  
4 have any other theory regarding a possible electrical  
5 fire that was the -- failure that was the ignition  
6 source for this fire?

7 A. No.

8 Q. I'd like to go through each of your  
9 theories regarding how this fire started and to talk  
10 about your supporting evidence to each of these  
11 theories.

12 A. Okay.

13 Q. And before that I'd like to just kind of  
14 walk through just a few short questions.

15 First, is it your opinion that there was  
16 an electrical failure with the base station?

17 A. No. I don't -- no.

18 Q. Is it your opinion that there was an  
19 electrical failure with its power supply?

20 A. I don't know.

21 Q. Is it your opinion that there was an  
22 electrical failure with the power supply?

23 A. I don't know.

24 Q. Okay. So if you don't know, then you're  
25 -- are you going to testify in front of the jury that

Page 29

1 there was a power failure ---

2 A. --- I can't ---

3 Q. --- Excuse me -- electrical failure.

4 A. I can't, because we don't have it to look  
5 at and I just don't know.

6 Q. Okay. Is it your opinion that there was  
7 any electrical failure?

8 A. Outside of the base station or ---

9 Q. --- Yes.

10 A. No, I don't have an opinion to that  
11 effect.

12 Q. So is it your opinion that this wireless  
13 device was a potential for ignition?

14 A. Yes.

15 Q. And is it your understanding that that is  
16 Mr. Stone's opinion, that the wireless device was a  
17 potential source for ignition?

18 A. That's my understanding.

19 Q. Is there anything different from what you  
20 just told me, that there's this poten -- that this  
21 wireless device is a potential for an ignition source  
22 -- is there anything different between your opinion,  
23 Mr. Stone's opinion, and Mr. Small's opinion?

24 A. Is there any different between those?

25 Q. Right.

Page 30

1           A.     No.

2           Q.     Because I wrote down earlier that when you  
3     spoke with Mr. Small ---

4           A.     --- Uh-huh.

5           Q.     --- He told you that the wireless device  
6     is a potential for ignition. Did I write down that  
7     correctly?

8           A.     Yes.

9           Q.     Okay. Other than that, did Mr. Small tell  
10    you anything else regarding his opinion?

11          A.     No. I read his -- read his report but I  
12    -- we haven't talked about it other than the first  
13    conversation.

14          Q.     Okay, and in his report is there anything  
15    different besides the fact that there was a potential  
16    for ignition?

17          A.     No.

18          Q.     Thank you for going through those  
19    questions. Now, I'd like to go back to a question I  
20    asked you earlier.

21           I'd like you to talk to me about all the  
22    possible theories you have or you have discussed ---

23          A.     --- Uh-huh.

24          Q.     --- Regarding how the fire started.

25          A.     Discussed that we had a missing potential

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1       source of ignition that I can't eliminate, and we  
2       have discussed the potential that this fire was  
3       incendiary.

4           Q.     Okay. Let's first start with this missing  
5       source of ignition.

6           A.     Uh-huh.

7           Q.     Okay, so that we can exhaust that topic.  
8       And you can go ahead and tell me everything that --  
9       all the evidence that you have regarding the missing  
10      source of ignition and then we'll get to your second  
11      theory. Okay?

12          A.     Okay.

13          Q.     What are you referencing when you state  
14      that there was a missing source of ignition?

15          A.     The surveillance photographs taken by the  
16      Fayetteville police department, the photographs taken  
17      by Mr. Lacy, and the photographs taken by Mr. Henry  
18      Martini, as well as the documents that the insured  
19      provided for electronic equipment that was installed  
20      in the building.

21          Q.     And when you say the photographs, are you  
22      specifically referencing the photographs that show  
23      the printed circuit boards?

24          A.     Yes, ma'am.

25          Q.     Okay. I just want to make sure that the

Page 32

1 record's clear.

2                   When were you first contacted about this  
3 case?

4                   A. November of 2012.

5                   Q. And in November of 2012 did you go to the  
6 scene of the fire?

7                   A. I did.

8                   Q. And what did you find when you went to the  
9 scene of the fire?

10                  A. I'm -- the scene had been changed  
11 tremendously since the -- the fire. There were  
12 missing furniture. There's cooking equipment that  
13 was no longer there. There was a small debris pile  
14 in the back. There were metal -- some metal  
15 components were missing. All the contents of the  
16 freezer and refrigerator were gone. So any --  
17 anything that you can imagine that would be  
18 perishable or -- or cleaned up ---

19                  Q. --- Or salvageable.

20                  A. --- Or salvageable was taken out,  
21 including the overhead fixtures that were in those  
22 photographs and so forth.

23                  Q. Did you ask anyone where all the contents  
24 went to?

25                  A. I asked Mr. -- our insured, Mr. ---

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1 Q. --- Diamantopoulos?

2 A. Diamantopoulos. Excuse me. I can't  
3 pronounce his name. Sorry.

4 Q. Uh-huh.

5 A. Where it was and he -- he -- he understood  
6 that it had been collected for salvage and that it  
7 had been moved out.

8 Q. By whom?

9 A. I don't know.

10 Q. Was it by him?

11 A. I don't know.

12 Q. Okay.

13 A. I didn't ask him.

14 Q. So that's your limited knowledge ---

15 A. --- Yeah, that -- that was it, yeah.

16 Q. --- Of where all of that went to.

17 A. Yes, ma'am.

18 Q. Did you ever ask to see if, for example,  
19 the light fixtures, if they were still ---

20 A. --- I actually ---

21 Q. --- In existence?

22 A. I actually thought that they were  
23 collected by the -- at the -- the experts. And  
24 that's when -- I was looking forward to seeing all  
25 that evidence when we came for the joint exam,

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1 because I ex -- expected those to have been collected  
2 by them.

3 Q. Okay. That wasn't my question.

4 A. Okay.

5 Q. My question is did you ever ask your  
6 client ---

7 A. --- Uh-huh.

8 Q. --- Mr. Diamantopoulos, whether or not any  
9 of the stuff that was collected from or removed from  
10 the fire scene, if that was still in existence.

11 A. I asked him if he had taken any of it and  
12 he said no.

13 Q. Okay.

14 A. But I don't know whether or not it was  
15 still in existence. I -- I ---

16 Q. --- Okay.

17 A. --- I -- he said that it had been  
18 collected by -- for salvage or that it had been  
19 removed by someone. And -- and as a matter of fact I  
20 think he told me that he didn't know where some of it  
21 had gone.

22 Q. Okay.

23 A. Okay.

24 Q. Did you ever ask Mr. Wiggins, the attorney  
25 who has retained your services, to find out where all

Page 35

1 of the items that were collected were taken to?

2 A. No.

3 Q. Okay.

4 A. It was a year afterwards. I just didn't  
5 think that it was still in existence at that point.  
6 Most of my experience is that once the -- the metal  
7 and things like that are collected, they're salvaged  
8 and gone.

9 Q. Okay.

10 A. After -- especially after a year.

11 Q. I understand that. But specifically in  
12 this case you did not ask.

13 A. No.

14 Q. Okay. So in November of 2012 you went  
15 into the building, and it had been cleaned out, for  
16 lack of a better term.

17 What else did you do besides going into  
18 the building and looking around the building?

19 A. I photographed -- or examined the branch  
20 circuitry that was in the area of origin, which I  
21 identified as the area around the rear drive-thru  
22 window.

23 Q. Uh-huh.

24 A. I also went through what was left of the  
25 debris pile in that area to see if I could locate any

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1 items in there that would be of interest. And I  
2 diagramed the building. And I, of course, discussed  
3 the loss facts with Mr. Diamantopoulos on the -- that  
4 day.

5 Q. Okay, so photographed -- are all your  
6 photographs in -- on one of these two disks?

7 A. Yes, ma'am.

8 Q. Okay.

9 MS. DALY: If we can mark this as  
10 Exhibit 1 and 2.

11 (\* Exhibit 1 was marked \*)

12 (\* Exhibit 2 was marked \*)

13 Q. (Ms. Daly) Did you interview anyone?

14 A. Just Mr. Diamantopoulos.

15 Q. And is he the only person you've  
16 interviewed relating to this case?

17 A. Yes. I wasn't asked to interview anyone  
18 else.

19 Q. Were you asked to interview Mr.  
20 Diamantopoulos?

21 A. I was.

22 Q. And who asked you to do so?

23 A. Mr. Wiggins.

24 Q. Okay. And so I understand how your  
25 services work, you are asked to do certain tasks by

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1       Mr. Wiggins. And are those the only tasks that you  
2       do?

3           A. Yes, ma'am.

4           Q. Okay. When did you first interview Mr.  
5       Diamantopoulos?

6           A. My first day on the scene at the  
7       restaurant.

8           Q. Okay.

9           A. I'd have -- to tell you the exact date  
10      I'll have to go and look at my notes. But you have  
11      those.

12          Q. Okay. Did you interview Mr.  
13      Diamantopoulos again after this November 2012 date?

14          A. No, ma'am.

15          Q. Okay, so the record is clear, you've only  
16      interviewed Mr. Diamantopoulos one time?

17          A. Yes, ma'am.

18          Q. Is that correct?

19          A. That's correct.

20          Q. Okay. Anything else that you did  
21      regarding your investigation of this fire?

22          A. As far as that day or overall?

23          Q. Overall.

24          A. Well, we did the joint scene exam -- or --  
25      joint scene exam the one day. We did the evidence

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1 exam at Mr. Cavarock's office. And I've done some  
2 Internet research on the power supply that we found  
3 at the joint exam that was unplugged. I checked on  
4 that.

5 And I -- once I got the two expert  
6 reports, I -- once I read those and they indicated  
7 that a class-two power supply and that low-voltage  
8 circuit board could not ignite, I did some research  
9 on that. And that's when I found the document that  
10 Mr. Small had written.

11 Q. Well, is it your understanding that he  
12 said that it could not or that in this specific case  
13 it did not?

14 A. It -- Mr. Lacy -- I -- my understanding,  
15 in his report said that it's not possible because  
16 it's -- it -- it can't generate enough energy.

17 Q. Okay. And you've read Mr. Martini's  
18 report as well?

19 A. I have.

20 Q. Okay.

21 A. And in his it indicates that it's -- that  
22 it was -- the class-two power supply was designed to  
23 lessen or minimize the potential for ignition.

24 Q. Okay, so let's back up to the original  
25 question.

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1                   Your one theory is that it surrounds this  
2 base station wireless device?

3                 A. It's a potential possibility, yes.

4                 Q. Okay. And so that it's very clear, you  
5 are not testifying that it was the ignition source.

6                 Correct?

7                 A. That's correct.

8                 Q. And you are not testifying that it was  
9 more likely than not the ignition source.

10                A. That's correct.

11                Q. So your testimony is solely that the  
12 wireless device is a potential source of ignition.

13                A. Yes.

14                Q. Tell me everything that you base that  
15 statement on.

16                A. I base it on its presence, its location  
17 and orientation to the fuel load or fuel package  
18 there.

19                Q. Uh-huh.

20                A. And the fact that it -- it's not available  
21 to be eliminated forensically by anyone else other  
22 than Mr. Lacy and Mr. Martini, and that I believe it  
23 is potential -- it could potentially ignite because  
24 of the information that I read and discussed with Mr.  
25 Stone and Mr. Small.

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1           Q.    Okay. And when you say that it could  
2 potentially ignite and that's what you've discussed  
3 with Mr. Stall -- Small and Mr. Snow -- Stone.

4           A.    Yes.

5           Q.    Did you discuss that aspect, the fact that  
6 it could potentially ignite, with Mr. Small and Mr.  
7 Stone because they are both engineers?

8           A.    Yes.

9           Q.    Anything else that supports your opinion  
10 that the wireless device is a potential source of  
11 ignition?

12          A.    No.

13          Q.    Okay. So I'm going to walk through these  
14 statements. So you said based on its presence alone,  
15 it's your testimony that it's a potentially source of  
16 ignition. So what do you mean by based on its  
17 presence?

18          A.    Any -- if it's an electrical device that  
19 could conceivably fail and produce heat, it must be  
20 con -- included in the potential theories or  
21 hypotheses that are developed. And that's why it's  
22 in there on its mere presence.

23          Q.    Anything else?

24          A.    About its mere presence?

25          Q.    Correct.

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1           A.     No.

2           Q.     Okay, and second, you said that the  
3     location of it ---

4           A.     --- Yes.

5           Q.     --- Supports your opinion that it could be  
6     a potential ignition source.

7           A.     Right.

8           Q.     What are you referring to when you say its  
9     location?

10          A.     Its proximity to the fuel package, the EUO  
11     by ---

12          Q.     --- If you -- if you'll just -- forgive  
13     me.

14          A.     No problem.

15          Q.     When you say proximity to fuel package,  
16     are you basically saying its proximity to the origin  
17     of the fire?

18          A.     To the fuel package or -- and when I say  
19     fuel package I'm talking about ---

20          Q.     --- Because what are you referring to when  
21     you say ---

22          A.     --- The ---

23          Q.     --- Fuel package?

24          A.     The metal shelves ---

25          Q.     --- Okay.

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1           A. --- Which included the plastic plates,  
2 plastic cups ---

3           Q. --- Uh-huh.

4           A. --- And foam containers.

5           Q. Okay. I didn't mean to interrupt you ---

6           A. --- No.

7           Q. --- But thank you for explaining that to  
8 me.

9           A. No problem.

10          Q. You were getting ready to say something  
11 about an EUO.

12          A. Yes. Mrs. Moon ---

13          Q. --- Uh-huh.

14          A. --- Her EUO.

15                 In her EUO she indicated that the top  
16 shelf or the upper section of that shelf contained  
17 foam products, foam carry-out containers and so  
18 forth, which are easily ignitable.

19          Q. Okay. The third factor you mentioned to  
20 support your opinion is that it's not available to be  
21 eliminated.

22          A. Yes.

23          Q. And what do you mean by the fact that it's  
24 not available to eliminate at first?

25          A. Well, I haven't been able to look at it

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1 other than in photographs. Mr. Stone hasn't been  
2 able to look at it, nor has Mr. Small, only by the  
3 photographs that we've been provided. They're  
4 limited photographs.

5 Q. What do you mean, they're limited?

6 A. I think I counted a total of 10  
7 photographs of this particular item. That's all that  
8 I've seen.

9 Q. Okay.

10 A. Four -- four by Fayetteville police  
11 department, two that are included in Mr. Lacy's that  
12 are of where the item originally was left by Chad  
13 Royal.

14 Q. Uh-huh.

15 A. And then the -- I think there's four that  
16 Mr. Martini has, two from a distance showing up a  
17 table with other items on it, and the front and back  
18 of the printed circuit board on the table.

19 Q. Okay, and you've seen all of those  
20 photographs. Correct?

21 A. I have.

22 Q. Okay. Since you have read the reports of  
23 Mr. Martini and Mr. Lacy ---

24 A. --- Uh-huh.

25 Q. --- You are aware that Mr. Martini

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1       inspected these printed circuit boards. Correct?

2           A.     Yes.

3           Q.     And that he eliminated these printed  
4       circuit boards as a potential source of ignition for  
5       this fire.

6           A.     Yes.

7           Q.     Do you have any evidence to contradict Mr.  
8       Martini's finding?

9           A.     No.

10          Q.     Okay. Have you ever spoken to Mr. Martini  
11       regarding his examination and elimination of the  
12       printed circuit boards ---

13          A.     --- No.

14          Q.     --- As an ignition source?

15          A.     No.

16          Q.     So that I understand your bucket and Mr.  
17       Stone's bucket, if you were going to examine printed  
18       circuit boards for an electrical failure, would you  
19       have Mr. Stone present to inspect and eliminate the  
20       printed circuit boards as a potential source of  
21       ignition?

22          A.     He or another electrical engineer or  
23       another engineer, yes.

24          Q.     Okay, but in this case -- I understand we  
25       could have a hundred people come in and look at it.

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1 I'm talking about in this case.

2 A. Yes, I would have.

3 Q. Would that be your -- what you would do?

4 A. That's exactly what I would do.

5 Q. Okay. And is there something that Mr.

6 Small could do in his evaluation and elimination of  
7 the printed circuit boards that Mr. Stone would not  
8 be able to do?

9 A. I don't know. I can't answer that  
10 question.

11 Q. Are you testifying that the fluorescent  
12 lighting is a potential source of ignition?

13 A. No.

14 Q. How did you rule that out?

15 A. I ruled it out by the photographs in the  
16 origin area. It did not -- the fire did not appear  
17 to have originated above ceiling level and it did not  
18 appear that there was a fuel load for ignition above  
19 ceiling level. And I didn't see anything on the  
20 lights that would indicate either way, and I don't  
21 think that Mr. Stone did either.

22 Q. Anything else about your first theory that  
23 the wireless device is a potential source of ignition  
24 that we haven't covered today?

25 A. Not that I'm aware of.

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1           Q.    Okay.  But as you sit here right now, is  
2 there any evidence that you have that we haven't  
3 covered?

4           A.    No.

5           Q.    And is there anything about your theory  
6 that we have not discussed?

7           A.    Not about my theory, no, or in the  
8 potential hypothesis, no.

9           Q.    Okay.  And have you spoken to anybody  
10 regarding this theory about the base station?  Have  
11 you spoken to anyone?

12          A.    Mr. Stone and Mr. Wiggins ---

13          Q.    --- Okay.

14          A.    --- And Mr. Small.

15          Q.    Anyone else?

16          A.    No.  I think I mentioned to Chad Royal  
17 when I talked to him that that -- that that circuit  
18 board was there and it looks pretty hard to  
19 eliminate.  I think that's all I said to him.

20          Q.    Okay.  Anything else you remember about  
21 the discussion with Chad Royal?

22          A.    Umm, that it was -- that he identified  
23 that -- the circuit board as being in the origin  
24 area, in that corner.

25          Q.    Anything else?

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1           A. Not that I can recall at the moment. My  
2 notes have more information about my discussion with  
3 Chad. And that's -- that's all that I can recall at  
4 the moment. He -- we discussed other things in  
5 relation -- relation to the case but not ---

6           Q. --- What are the other things, just while  
7 we're discussing your conversation with Mr. Royal?

8           A. May I review my notes?

9           Q. Sure.

10          A. Okay.

11          Q. Of course.

12           (Witness examined document)

13          A. It looks like I spoke to him on November  
14 13th. I think we had an appointment at three  
15 o'clock.

16          Q. Give me one moment to get there, please.

17          A. I think it's on my fourth page of notes.

18          Q. Mr. Booth, can you look at these notes and  
19 make sure that I'm not missing any pages of your  
20 notes?

21           (Witness examined document)

22          A. No, ma'am.

23                   MS. DALY: Please mark this as  
24 Exhibit 3.

25                   (\* Exhibit 3 was marked \*)

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1                   THE WITNESS: Are you ready?

2                   MS. DALY: Yes.

3                   THE WITNESS: Ready to go? Okay.

4                   Q. (Ms. Daly) November 13th, 2012, page ---

5                   A. --- It's the ---

6                   Q. --- Four of your handwritten notes?

7                   A. Yes, ma'am.

8                   Q. And this relates to your discussion with  
9 Mr. ---

10                  A. --- Chad Royal.

11                  Q. --- Chad Royal -- or Agent Chad Royal?

12                  A. Uh-huh.

13                  Q. Walk me through your notes so that I can  
14 have a better understanding of what you discussed  
15 with Agent Royal.

16                  A. Sure.

17                  Q. I'm not saying ---

18                  A. --- I'm sorry. Well, it's ---

19                  Q. --- Your writing is terrible.

20                  A. It's not great. I apologize.

21                   He said -- first of all, I have on here  
22 that he was unaware of who or if the window was  
23 broken on the drive-thru window.

24                  Q. Uh-huh.

25                  A. He talked about the dumpsters being

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1 missing. He said that he had received a call from  
2 the IRS in regards to the insured, something about  
3 not being able to pay for the water bill or gas and  
4 it was cut off. He also discussed a sewage runoff  
5 issue.

6 I -- this is -- my notes following this  
7 are my -- my review of the photographs that he had.  
8 He let me view his CD of photographs.

9 Q. Uh-huh.

10 A. I noted that there was heavy soot on the  
11 drive-thru window with a little bit of heat on the  
12 frame of the window.

13 Q. And what is the significance of that fact?

14 A. Umm, my first determination or my thought  
15 on it was is that it broke during the fire and that  
16 it was sooted for that reason.

17 Q. Any other significance or potential  
18 significance to the fact that there was heavy soot on  
19 the drive-thru window?

20 A. No. That -- I mean, it was -- it was cool  
21 on the outside and soot accumulated on the window  
22 because the fire was on the inside of it.

23 Q. Okay. And the fact that there was heat on  
24 the frame ---

25 A. --- That it vented at some point.

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1 Q. --- What is the significance?

2 A. That it vented ---

3 Q. --- Okay.

4 A. --- Or the window broke at some point and  
5 that we had heat escaping from the window.

6 Q. Okay.

7 A. He said they were using the front  
8 drive-thru as opposed to the rear.

9 Q. Have you ever had anyone tell you  
10 differently, that they were using the back drive-thru  
11 window?

12 A. Umm, I believe Mr. Diamantopoulos said at  
13 one point they had used it but they weren't at the  
14 time, not at the time of the fire.

15 Q. Okay.

16 A. It says something about a camera was over  
17 the vent for the bread oven, bread storage to the  
18 left of the rear drive-thru window. And we talked  
19 about that rack -- storage rack that was there.

20 Q. Did you ever ask Mr. Diamantopoulos if he  
21 moved the bread storage rack from the front  
22 drive-thru window to the back drive-thru window on  
23 the day of the fire?

24 A. No. I found out about the -- the  
25 discussions about that after my initial interview

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1       with him by reading the EUO's.

2           Q.    Okay.

3           A.    And I -- so I haven't spoken to him about  
4       that since.

5           Q.    Have you asked Mr. Wiggins or talked to  
6       Mr. Wiggins about that fact?

7           A.    I have. I discussed that with him. And  
8       -- and my understanding is is that -- that he didn't  
9       move them, is my understanding. But I don't know.  
10      Mrs. Moon says that it wasn't there in that location  
11      the night before.

12        Q.    Right. Anything else regarding the bread  
13      storage rack? Any other discussions?

14        A.    Huh-uh.

15        Q.    So your only discussion is limited to Mr.  
16      Wiggins when you mentioned the bread storage rack.

17        A.    Yeah. I think I discussed with him that  
18      there was a -- there was a demarcation line that  
19      appeared in the photographs that -- and at the scene  
20      that indicated that the bread storage rack was very  
21      close, if not right in front of the drive-thru  
22      window.

23        Q.    Okay. When you spoke with Mr. Wiggins, I  
24      want to know everything that was discussed regarding  
25      either the significance that it had been moved, the

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1 significance of where it was located.

2 A. I don't recall discussing anything about  
3 the significance of whether or not it had been moved  
4 or not.

5 Q. Okay.

6 A. It didn't -- I did not use it for my cause  
7 determination.

8 Q. Okay. Especially since you are a former  
9 detective with the police department ---

10 A. --- Uh-huh.

11 Q. --- So obviously your brain is going to  
12 work in a -- you know, having thoughts run through  
13 it.

14 A. Right.

15 Q. So I'd like to know your thoughts when you  
16 were putting together this -- you know, how this  
17 piece of evidence -- what were your thoughts  
18 regarding this piece of evidence, the fact that it  
19 was moved.

20 A. Well, if it had been moved -- and that's  
21 what I don't know.

22 Q. Okay.

23 A. Okay, if it ---

24 Q. --- If it had been moved.

25 A. If it would -- had -- had been moved, I --

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1 you know, I really can't say, because I don't know  
2 whether it had been moved or not.

3 Q. I understand that.

4 A. Okay. If ---

5 Q. --- Let's assume the jur -- how about  
6 this? The jury believes the testimony from Ms. Moon  
7 and Ms. Ravere -- I believe was her name -- the other  
8 manager on duty -- that when they left at four a.m.  
9 the bread rack was in drive-thru window one.

10 A. Uh-huh.

11 Q. And they locked up.

12 A. Uh-huh.

13 Q. They did not go back into the premises.  
14 And when the fire started the bread rack was at  
15 drive-thru window two.

16 A. Uh-huh.

17 Q. What were your thoughts -- what are your  
18 thoughts regarding the fact that it was moved to  
19 drive-thru window two? And I understand you're not  
20 accepting it had been moved to drive-thru window two.  
21 Be very clear for the record that if the jury finds  
22 that it was moved between four a.m. and the time this  
23 fire started, what were your thoughts as a  
24 cause-and-origin expert ---

25 A. --- Well, if they didn't ---

1 Q. --- And former detective.

2 A. If they didn't move it, and the only  
3 person that had occupied that structure before the  
4 fire, then I would have thought that maybe Mr.  
5 Diamantopoulos may have moved it.

6 Q. Okay, and what would be the significance  
7 of its location if Mr. Diamantopoulos moved it?

8 A. It would be speculative. And I don't know  
9 that I can answer that. It is -- it is blocking the  
10 window.

11 Q. Okay, that -- so that's not speculative.  
12 It was blocking the window. Correct?

13 A. There's -- there is physical evidence to  
14 support that, yes.

15 Q. Okay, so that's not speculative. The one  
16 is that the location of this bread rack was blocking  
17 the window from the -- and when you say blocking the  
18 window, you mean someone from the outside could not  
19 see into the restaurant?

20 A. See, that's -- that I don't know, exactly  
21 how much it was blocking it.

22 Q. Okay.

23 A. In fact there is -- there is an area on  
24 the wall that's a demarcation line ---

25 Q. --- Uh-huh.

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1           A. --- That suggests that that's where it  
2 was.

3           Q. Right.

4           A. I don't know how much it would have  
5 blocked view.

6           Q. Okay.

7           A. It does appear that it would have blocked  
8 a significant amount of view into the interior of the  
9 building, yes.

10          Q. Okay. So that's one significant point of  
11 it.

12                 The other -- what other significance does  
13 it have?

14          A. It could have blocked view.

15          Q. Okay. Would it also have had the fuel  
16 source?

17          A. Oh, no, I don't believe it would have been  
18 fuel source.

19          Q. Okay.

20          A. It's -- it's an aluminum, very difficult  
21 to ignite.

22          Q. I'm not talking about the aluminum bread  
23 rack. I'm talking about the contents on the aluminum  
24 bread rack.

25          A. I don't know.

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1           Q.     Okay. Well, you said earlier -- this was  
2 your ---

3           A.     --- Uh-huh.

4           Q.     --- Your statement, that it was the  
5 proximity to the fuel package.

6           A.     Uh-huh.

7           Q.     And I said what do you mean by fuel  
8 package.

9           A.     Uh-huh.

10          Q.     And you said, well, there was this bread  
11 storage rack ---

12          A.     --- I -- no, I did not ---

13          Q.     --- With the ---

14          A.     --- No.

15          Q.     --- With the plastic foam plates that Ms.  
16 Moon testified to.

17          A.     It was not the bread rack.

18          Q.     Okay. So tell me, then, what was the fuel  
19 package?

20          A.     The -- the metal shelves, the slatted  
21 shelves ---

22          Q.     --- Uh-huh.

23          A.     --- That were located along the wall ---

24          Q.     --- Uh-huh.

25          A.     --- In that corner that stored those

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1 items.

2 Q. Okay, so you're talking about two  
3 different, then, shelves.

4 A. Yeah. There's a set of shelves ---

5 Q. --- Uh-huh.

6 A. --- That were in that corner and then  
7 there was the bread rack.

8 Q. Okay, so the bread rack, the significance  
9 of the bread rack, if it was located in the  
10 drive-thru window, the only significance to you is  
11 that it could have potentially blocked the view.

12 A. Yes.

13 Q. Okay. Did it have anything on it that  
14 could have fueled the fire?

15 A. I don't know what was in it.

16 Q. Okay.

17 A. I don't know what was in it. I'd -- it  
18 was adjacent to the origin. It was -- in other  
19 words, if you have a corner ---

20 Q. --- Uh-huh.

21 A. --- You know, use a piece of paper for the  
22 corner, you have a window, and you have the bread  
23 rack, and then you have the shelves here, and this is  
24 your origin area, it was adjacent to that.

25 Q. Okay, thank you.

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1                   Anything else regarding this bread rack?

2           A.     Not that I can think of.

3           Q.     Okay, thank you. You can go -- continue  
4 down your notes.

5           A.     I noticed -- noted in the photographs that  
6 there was heat damage to the DVR that was located on  
7 the upper corner of that office shelf. I noted that  
8 Mr. Royal said he believes that it was corrupted,  
9 according to Mr. Lacy.

10          Q.     Did Mr. Royal tell you his discussions  
11 with Mr. Diamantopoulos about their surveillance  
12 system?

13          A.     I don't have any notes to that effect.

14          Q.     Okay. And have you read Mr. -- Agent  
15 Royal's deposition?

16          A.     I have not.

17          Q.     Okay.

18          A.     Just to be clear, I haven't read any of  
19 those depositions.

20          Q.     Okay, thank you.

21                   Before we continue, while I think about  
22 it, have you ever worked with Agent Royal?

23          A.     On other fires, yes.

24          Q.     On other fires. And is there anything  
25 regarding Agent Royal's reputation -- as a

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1 cause-and-origin expert, is there anything about his  
2 history that you would say would support you  
3 contradicting anything that Agent Royal says or you  
4 questioning his credibility?

5 A. Credibility, no.

6 Q. Okay.

7 A. Questioning a cause determination, that  
8 happens on a -- on a, you know, fairly -- not  
9 consistent basis, but it happens. I mean, when two  
10 different experts look at something, there -- there's  
11 times when we don't -- we differ on opinion.

12 Q. Uh-huh.

13 A. But his credibility, no. He's a great  
14 guy.

15 Q. Okay. And if Agent Royal testifies that  
16 Mr. Diamantopoulos told him that the surveillance  
17 system fed into two computer towers, would you have  
18 any reason to refute what Agent Royal testified to?

19 A. Only that the installer of the video  
20 surveillance system said that it did not.

21 Q. Okay. I understand that -- let me --  
22 first I want to talk about what Mr. -- Agent Royal's  
23 credibility. Would you have any reason to -- or any  
24 evidence to refute what Agent Royal testified to that  
25 Mr. Diamantopoulos told him?

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1           A.     No.

2           Q.     Okay. And, then, now you can -- you had a  
3     follow-up statement regarding a conversation that you  
4     had with Mr. Dowlat. Is that correct?

5           A.     Yes.

6           Q.     Okay.

7           A.     My understanding is is that they're the  
8     ones who installed the system, that ---

9           Q.     --- Mr. Dowlat.

10          A.     Yeah, yes. That -- that it was located in  
11     that upper corner ---

12          Q.     --- In the office?

13          A.     --- In the office. It's photograph -- it  
14     -- it has been photographed, and that there are other  
15     -- the feeds for the cameras go to that location.

16          Q.     Okay.

17          A.     Now, whether or not Mr. Royal and the  
18     local police department believed they had the DVR  
19     hard drives or not I can't say. They may have  
20     believed that they had them.

21          Q.     Okay. Did you ever have a conversation  
22     with Mr. Diamantopoulos about the DVR hard drives?

23          A.     Yes. We discussed that the first day.

24          Q.     Okay. We'll get to everything you  
25     discussed with Mr. Diamantopoulos when we go through

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1       your notes. So we'll just put that to the side. And  
2       let's go ahead and continue going down your notes and  
3       what you talked to -- discussed with Mr. Royal.

4           A.    Okay. There was a -- in his photographs  
5       there was a container labeled gas, a plastic  
6       container -- the CO<sub>2</sub> bottles in the photographs. He  
7       said that ---

8           Q.    --- What was the significance for you  
9       writing ---

10          A.    --- That there was ---

11          Q.    --- That statement down?

12          A.    There was a photograph of a container  
13       that's labeled gas.

14          Q.    Okay. Did you find any significance about  
15       that? I mean ---

16          A.    --- Well, I would be ---

17          Q.    --- Was it a potential ---

18          A.    --- I would be surprised that it was in a  
19       restaurant. And I think that that was of interest to  
20       me and that's why I noted that.

21          Q.    Okay, and why was it in the restaurant?

22          A.    Well, there would be follow-up to that at  
23       that day. I mean, he -- I was told that it was there  
24       because he had ran out of gas and they filled up gas  
25       for him and brought him the container and it was

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1       brought back. And it was labeled that way so nobody  
2       would do anything with it.

3           Q.     Okay.

4           A.     That's what I was told.

5           Q.     And who told you that?

6           A.     Mr. Wiggins. And I believe that it's in  
7       Ms. -- Ms. Moon's EUO.

8           Q.     Okay. Did you ever ask Mr. Diamantopoulos  
9       ---

10          A.     --- Like I said ---

11          Q.     --- The veracity ---

12          A.     --- I didn't know about that until after  
13       that ---

14          Q.     --- Okay.

15          A.     --- Interview, my first interview with  
16       him.

17          Q.     And so is it your understanding that Mr.  
18       Wiggins went and asked Mr. Diamantopoulos why there  
19       was this container labeled gas and then he reported  
20       back to you?

21          A.     Yes.

22          Q.     Okay. Did he already have the answer when  
23       you asked him or did he have to go talk to Mr.  
24       Diamantopoulos and report back to you?

25          A.     He had the answer already is my

1 understanding.

2 Q. Okay.

3 A. Yeah. That's what I recall.

4 Q. Anything else significant about that  
5 statement?

6 A. About which statement?

7 Q. The statement that we're talking about ---

8 A. --- That there was gas there? You -- you  
9 know, I -- like I said, I thought it was unusual that  
10 it was in a restaurant.

11 Q. Right. And did you have any other  
12 discussions regarding it?

13 A. With?

14 Q. Anyone.

15 A. Not that I'm aware of, no.

16 Q. Okay.

17 A. I -- I -- I -- I think I told Mr. Wiggins  
18 that I thought it was odd that it was in a  
19 restaurant.

20 Q. Okay.

21 A. I didn't get ---

22 Q. --- Anything else?

23 A. No.

24 Q. Okay. Did you have a discussion with  
25 Agent Royal about it?

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1           A. I told him that I thought it was odd that  
2 it was in a restaurant.

3           Q. And did he have any comment?

4           A. I asked him if he collected it and he said  
5 no.

6           Q. Okay. Anything else?

7           A. I asked him if he took samples and he said  
8 no.

9           Q. Anything else?

10          A. No.

11          Q. Okay. You're next -- you can go on to the  
12 next ---

13          A. --- Okay. It says safety glass inside the  
14 drive. Debris on top of the glass was what he was  
15 explaining to me. What -- and my significance for  
16 that was that it -- that it broke earlier in the fire  
17 and debris fell on top of it.

18          Q. Okay.

19          A. There were pictures of the circuit board  
20 heavily damaged discovered by Chad during excavation  
21 of the origin area. And so I -- circuit board may  
22 have been from the headset communication system. And  
23 I knew about that because of my initial interview  
24 with Mrs. -- Mr. Diamantopoulos.

25          Q. Okay. So I want to break this down. You

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1 saw the pictures of the circuit board. Correct?

2 A. Uh-huh.

3 Q. Had you already seen pictures of the  
4 circuit board prior to going to Agent Royal's office?

5 A. No.

6 Q. Okay. Had you had discussions regarding  
7 the wireless device prior to going to Agent Royal's  
8 office?

9 A. One moment. I'm going to read some of my  
10 notes at the beginning when I spoke to Mr.  
11 Diamantopoulos, because if I recall correctly, there  
12 was a mention of it on that first day.

13 (Witness examined document)

14 A. Yeah, I have it noted in my first diagram.  
15 When I was talking to Mr. Diamantopoulos, he noted --  
16 I was asking him what was in the area and he noted  
17 that the drive-thru wireless headset system was  
18 there. And that's on my second page of my notes.

19 Q. Second page of Exhibit 3.

20 How did this wireless headset come up in  
21 discussion?

22 A. I asked him what was in the area of fire  
23 origin. And that's why we drew this diagram. I  
24 wanted to know what was where at the time of the  
25 fire.

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1           Q.    Okay. Anything else?

2           A.    No. The next item on there is I said that  
3   I needed to identify the brand, model, age, and check  
4   for recalls on the headset system.

5           Q.    Okay, and were you able to do that?

6           A.    Yes.

7           Q.    Okay. How were you able to identify the  
8   brand?

9           A.    It was documented in the documents that --  
10   exhibits that were provided for items that were  
11   destroyed during the fire is my understanding.  
12   That's -- that's what I think those documents were.  
13   It's listed in there as the -- as an HME Ion IQ on  
14   the -- on a receipt or a bill of -- a bill of sale or  
15   a PO that's in the documents.

16          Q.    Okay. So that I understand what you're  
17   referencing, is this something that Mr.  
18   Diamantopoulos provided?

19          A.    It -- all I can tell you is is it's in the  
20   documents that I was provided by Nationwide as -- I  
21   -- and I believe they're Mr. Jezierski's --  
22   Jezierski's documents.

23          Q.    Uh-huh. I'm a -- it -- I'm a little  
24   unclear. How was it determined what brand the  
25   wireless device was? Did you ever talk to Mr.

1 Diamantopoulos and ask him ---

2 A. --- No. I asked ---

3 Q. --- The brand?

4 A. I asked Mr. Wiggins following the  
5 discovery of the circuit board ---

6 Q. --- Okay.

7 A. --- And knowing that it was there ---

8 Q. --- Uh-huh.

9 A. --- I asked what brand it was. I later  
10 found in the discovery documents a ---

11 Q. --- Okay. Well, first, did Mr. Wiggins  
12 tell you what brand it was?

13 A. Yeah.

14 Q. Okay, so he told you. So you talked to  
15 Mr. Wiggins ---

16 A. --- Uh-huh.

17 Q. --- And he told you what brand it was?

18 A. That's right.

19 Q. And how did Mr. Wiggins know the brand?

20 A. I believe he was told by the installer.

21 Q. Okay. And that's what I'm trying to  
22 figure out ---

23 A. --- Mr. Dowlat. That ---

24 Q. --- Is if -- so Mr. Dowlat supposedly told  
25 Mr. Wiggins the brand.

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1           A.     Yes.

2           Q.     Okay. And, then, please continue.

3           A.     And then after that it was -- I found in  
4     those documents a -- it's either -- it's a receipt  
5     that indicates on there HME Ion IQ.

6           Q.     And were you able to determine the age?

7           A.     I believe it was installed that date. I  
8     don't know what -- if the date is on the -- on the  
9     piece -- on the receipt. But I don't know how old it  
10    was prior to installing it, no.

11          Q.     Is it your understanding that was  
12    installed after the alleged vandalism?

13          A.     Yes.

14          Q.     Okay. You also mention in here about  
15    checking recalls. Did you check the recalls?

16          A.     I did.

17          Q.     And what did you find?

18          A.     None, no recalls and no complaints.

19          Q.     What were you looking for when you were  
20    checking for recalls or complaints?

21          A.     The HME Ion IQ.

22          Q.     Okay. Were you looking to see  
23    specifically whether or not this device had ---

24          A.     --- I checked with ---

25          Q.     --- Been in a fire?

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1           A. I'm sorry. I checked with the CPSE,  
2 Consumer Products Safety Commission ---

3           Q. --- Uh-huh.

4           A. --- To find out if there were any recalls.  
5 And if there were any recalls, I would have checked  
6 to see why.

7           Q. Okay.

8           A. I also searched the Internet and  
9 specifically fire-related problems or complaints and  
10 found none.

11          Q. Anything else? Did you have any  
12 discussion with Agent Royal regarding the wireless  
13 headset?

14          A. I told him that it was in the area of  
15 origin and that -- that I wondered how it had been  
16 eliminated. And he said, well, that was specifically  
17 the reason that he felt uncomfortable making the  
18 initial call and why he initially called it as an  
19 undetermined fire.

20          Q. And Agent Royal is not an electrical  
21 engineer. Correct?

22          A. No.

23          Q. So he is like you.

24          A. No.

25          Q. He's solely a cause-and-origin expert.

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1           A.    That's right.

2           Q.    Correct?

3           A.    That's right.

4           Q.    So he would not be qualified to eliminate  
5       an electrical ---

6           A.    --- No.

7           Q.    --- Fire source.

8           A.    --- He made a good choice. No.

9           Q.    Is that correct?

10          A.    That's correct.

11          Q.    Okay. And did he -- well, you haven't  
12       read his testimony.

13                 Did he tell you that he relied on Henry  
14       Martini's -- who is an electrical engineer -- his  
15       determination regarding whether or not there was an  
16       electrical failure in order to determine whether the  
17       fire was incendiary or undetermined?

18          A.    I recall Chad saying that -- that he  
19       discussed it with Terry Lacy. And I would -- based  
20       on that I would have been under the im -- impression  
21       that Martini had relayed -- through Mar -- through  
22       Lacy, he had been under the impression that Martini  
23       had eliminated electrical sources of ignition and  
24       that was why he changed his determination.

25          Q.    To?

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1           A. Incendiary.

2           Q. Okay. Okay, we can go on to the next  
3 statement.

4           A. Okay. It says that I discussed with Mike  
5 Winesette and advised he re -- I reviewed the  
6 photographs. I asked him to check on the headset  
7 system for an exemplar and discussed getting  
8 assistance on examination of the evidence by an  
9 electrical engineer.

10          Q. Okay.

11          A. And then I said ---

12          Q. --- And so that we're clear, Mike  
13 Winesette, is he an attorney?

14          A. Yes.

15          Q. For plaintiff?

16          A. He was -- he was the attorney that I was  
17 initially contacted by, yes.

18          Q. Okay.

19          A. For this case.

20          Q. Okay. Were you ever provided an exemplar?

21          A. No.

22          Q. What was told to you when you asked about  
23 obtaining a headset system for an exemplar?

24          A. That they would discuss that.

25          Q. And what was the outcome?

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1           A.    We have not purchased an -- an exemplar.

2           Q.    Why?

3           A.    I don't know why. I didn't ask.

4           Q.    Were you told that they were not going to  
5 purchase an exemplar?

6           A.    No, ma'am, huh-uh.

7           Q.    Has the discussions ever come back up?

8           A.    It -- yes.

9           Q.    And what was said then?

10          A.    We just didn't buy one. We didn't -- they  
11 didn't buy one. So I don't know why they de --  
12 determined not to purchase one. It was my  
13 recommendation that we purchase one and examine it.

14          Q.    Okay. And then you state discuss getting  
15 assistance of examination of evidence by an  
16 electrical engineer.

17          A.    I did.

18          Q.    And why did you discuss getting assistance  
19 of an examination of evidence by an electrical  
20 engineer?

21          A.    Because I'm not qualified to eliminate it.

22          Q.    How did it come about that Mr. Stone was  
23 retained?

24          A.    I spoke with one engineer and he declined  
25 the case.

1 Q. Why?

2 A. Because it was a Nationwide case.

3 Q. Okay. And what was the name of that  
4 engineer?

5 A. Mark Cassell with LWG Consulting.

6 Q. Okay.

7 A. Okay.

8 Q. Anything else?

9 A. And then I tried ---

10 Q. --- Was there any other discussion with  
11 Mark Cassell?

12 A. No, no.

13 Q. Okay, so you called him?

14 A. Uh-huh.

15 Q. You said I have a case, it's against  
16 Nationwide, and he said I'm going to decline?

17 A. He did.

18 Q. Anything else?

19 A. No. That's all.

20 Q. Okay. Go ahead.

21 A. And then I called John Cavarock, and he  
22 had already been retained by PWC.

23 Q. Okay.

24 A. And at that point, since Randy Down, who  
25 is with ---

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1           Q. --- And what else did you discuss with Mr.  
2 Cavarock?

3           A. He said he has already been retained by  
4 PWC, and I let it go at that.

5           Q. Okay. Did he tell you how it came about  
6 that he was retained by PWC?

7           A. I didn't ask.

8           Q. Okay.

9           A. I just cut it -- cut it at that, because I  
10 didn't want to discuss any more -- thing more with  
11 him.

12           I -- I -- at that point when -- because  
13 Mark had declined, Randy Down, who is also employed  
14 with LWG Consulting, which is another engineer I use,  
15 I couldn't use him. And Steve Stone is another  
16 engineer that I find highly qualified and reputable  
17 and so forth. So I contacted him and he agreed to  
18 take the case.

19           Q. Okay, so you contacted Mr. Stone directly.

20           A. I did.

21           Q. What did you tell him about the case?

22           A. I told him that there was a case involving  
23 a -- at a restaurant fire, and that I had been hired  
24 by a law firm in Fayetteville to take a look at it,  
25 and that I wondered if he would be willing to be --

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1       be involved and take a look at the evidence.

2           Q.    Okay.

3           A.    Because -- I didn't ask him to go to the  
4        scene. I had already been to the scene and I had --  
5        at that point was highly hopeful that this particular  
6        circuit board was going to be present at the joint  
7        scene exam -- or joint evidence exam, I should say.  
8        And that's why he was hired, was to look at that, the  
9        evidence including the circuit board.

10          Q.    Okay. And then did he also look at the  
11        photographs as well?

12          A.    He did.

13          Q.    Okay. Did you supply all the documents to  
14        Mr. Stone or did Mr. Wiggins do that?

15          A.    Umm, I provided to Mr. Stone anything --  
16        anything that I found, in other words, the -- the  
17        document from Mr. Small, anything that I found on the  
18        Internet that -- I think everything that I supplied  
19        to him he provided to you, but nothing as far as  
20        discovery documents. All of those documents would  
21        have been provided by Mr. Wiggins.

22          Q.    So your Internet researches you supplied  
23        to Mr. Stone.

24          A.    Yes.

25          Q.    Anything else?

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1           A.     No.

2           Q.     Okay. How about your photographs?

3           A.     Umm, yes, yes, he has got my photographs.

4           Q.     How about any of the other photographs  
5 from any other expert in this case?

6           A.     Anything that Mr. Wiggins had provided  
7 him. I don't -- I don't know exactly ---

8           Q.     --- But you didn't provide it to him?

9           A.     No, no, no.

10          Q.     Okay, so just your photographs and  
11 anything that you found on the Internet.

12          A.     Right. I think that I -- I think at one  
13 point he didn't have a set of photographs. And I did  
14 -- and I provided him a link to download those  
15 photographs. In other words, I had them, and I had  
16 them on my computer in a cloud server, and I provided  
17 him a link to download them just to make sure that he  
18 had those photographs.

19          Q.     And did you recommend using Mr. Stone  
20 because you -- in your opinion he was competent to  
21 give an opinion regarding whether or not there was an  
22 electrical failure or the source of ignition for this  
23 fire was electrical?

24          A.     Yes. His background includes small  
25 circuitry in airplanes and -- and so forth. And I

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1        felt like that he was perfectly capable of rendering  
2        an opinion on that if we had the evidence.

3            Q.     The rest of these notes, is this still  
4        relating to your discussion with Agent Royal?

5            A.     Umm, the only thing that's left of my dis  
6        -- discussion with Chad Royal was this phone call on  
7        November 16th ---

8            Q.     --- Uh-huh.

9            A.     --- At 9:35 at the bottom of the page.

10          Q.     Uh-huh.

11          A.     I discussed the DVR hard drive with Chad  
12        Royal, asked if he was told by Terry Lacy it had been  
13        collected -- a DVR. And he says he's not sure but he  
14        believes not.

15          Q.     Okay. Anything else?

16          A.     No, ma'am. At that point I don't think I  
17        spoke to Chad Royal again about this case.

18          Q.     So anything else regarding your first  
19        theory that the wireless headset was a potential  
20        source of ignition?

21          A.     No, ma'am.

22          Q.     Okay. So your second theory is that it  
23        was incendiary in nature.

24                    MS. DALY: And before we get on  
25        that, let's go ahead and take a break.

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1 (11:36-11:45 a.m. - recess)

2 MS. DALY: We can go back on the  
3 record.

4 Q. (Ms. Daly) So let's talk about the second  
5 theory that it was incendiary in nature.

If it is determined that there was no electrical ignition source to the fire, then would the fire be classified as incendiary in this case?

9               A.     It's my opinion that it's difficult to  
10   make a cause determination on the absence of  
11   accidental causes unless the -- the origin is clearly  
12   defined, as far as very clearly defined.

13 Q. Okay.

14                   A.     I'm -- I'm going to answer your question,  
15     I promise.

16                   In -- in this case, I'm not -- I do not  
17 believe that the origin is as clearly defined as --  
18 in other words, a clearly defined origin to me might  
19 be different than a clearly defined origin to an  
20 individual unfamiliar with fire patterns and so  
21 forth.

22 In my opinion, the origin, like I said in  
23 my report, could be from an upper level to lower  
24 level in the same area that Mr. Lacy has identified.  
25 If we could eliminate all potential sources of

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1 ignition then, yes, it would be an appropriate  
2 determination.

3 Q. What would be an appropriate ---

4 A. --- An incendiary fire cause would be an  
5 appropriate determination.

6 Q. Okay, so you just said if you could  
7 eliminate all sources of ignition ---

8 A. --- Uh-huh.

9 Q. --- Then it would be appropriate to  
10 determine the fire was incendiary.

11 A. Yes, ma'am.

12 Q. Okay, so what are all the sources of  
13 ignition that you would need to eliminate before you  
14 ruled that it was incendiary?

15 A. The branch circuitry including the lights  
16 from above ---

17 Q. --- Okay.

18 A. I'm including all of the things that would  
19 have been there, not the things that we've already  
20 discussed that have been eliminated.

21 The branch circuitry, the lights from  
22 above, and the Ion IQ.

23 Q. So you've read Mr. Stone's report where he  
24 eliminated the branch circuitry. Correct?

25 A. Yes.

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1 Q. And do you agree with his opinion that the  
2 branch circuitry was not the ignition source?

3 A. Yes.

4 Q. Do you agree that the lights were not the  
5 ignition source?

6 A. Yes.

7               Q.     Okay, so the only thing that we are left  
8     with is this wireless device. Correct?

9 A. Yes, ma'am.

10 Q. Okay, so if the wireless device is  
11 eliminated, then the fire would be classified as  
12 incendiary in nature. Is that correct?

13                   A.     It could be, yes. I don't know that I  
14 would make that determination.

15 Q. Okay. Would it be reasonable for a cause  
16 and origin expert and an SBI agent to determine that  
17 the cause was incendiary after the ION IQ has been  
18 eliminated?

19 MR. WIGGINS: Objection.

Go ahead and answer if you can.

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1 with that.

2 Q. (Ms. Daly) Is it your testimony that in  
3 this case there would be circumstances that exist  
4 that would make it inappropriate for a cause and  
5 origin expert to determine the fire incendiary after  
6 the Ion IQ wireless system was eliminated?

7 A. If it was competently eliminated, yes.  
8 Yes, it would be appropriate if it was competently  
9 eliminated.

10 Q. Okay. Well, we're assuming everybody --  
11 you said competently.

12 Is there any evidence that you have that  
13 you're saying someone did something incompetently in  
14 this case?

15 A. My answer to that would be that I don't  
16 believe that all of the steps that were necessary to  
17 eliminate that were taken.

18 Q. Okay, so let's walk through those steps  
19 ---

20 A. --- Okay.

21 Q. --- You're testifying were not taken.

22 A. Okay.

23 Q. Okay, so in general -- let's talk general  
24 and then we'll go specific. In general what steps  
25 would need to have been taken to determine that the

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1 printed circuit boards was not the ignition source?

2 A. It would need to be visually inspected.

3 Q. Okay.

4 A. Which it was. It would need to be  
5 collected and inspected under magnification. At  
6 least in -- I would not be doing this.

7 You understand that?

8 Q. Right, exactly, and that was -- is my  
9 point.

10 A. Okay.

11 Q. You would not be doing this. Correct?

12 A. Right. That's correct.

13 Q. So you are not the expert that is  
14 qualified to determine what is the competent  
15 evaluation of the PCB -- B's.

16 That would have been Mr. Stone. Correct?

17 A. That's right.

18 Q. And if Mr. Stone testified that he had no  
19 evidence that they were -- that they were not  
20 examined in a competent way, would you have any  
21 reason to disagree with Mr. Stone?

22 A. Are you asking me do I believe that Mr.  
23 Stone thinks that it was not competently eliminated?

24 Q. Well, no, but I can ask you that.

25 Did Mr. Stone ever tell you that the PCB's

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1       was not competently eliminated?

2           A.    He said to me that he didn't believe all  
3       the steps that should have been taken to eliminate it  
4       were taken.

5           Q.    Okay, and what steps did he tell you were  
6       not taken?

7           A.    It should have been collected and examined  
8       under magnification for -- and I think he talked  
9       about color distemperation or something of that  
10      nature, but I'm -- that's his ball of wax, not mine.

11          Q.    Okay, so under -- when you're testifying  
12       in front of the jury, you are not qualified to  
13       testify regarding the appropriate steps that should  
14       have been taken to eliminate the PCB's. Is that  
15       correct?

16          A.    I would not agree with that statement.

17          Q.    Okay, and why not?

18          A.    Because in my experience, the process is  
19       to determining a fire -- let's say -- when you make a  
20       cause determination that a fire is incendiary ---

21          Q.    --- Uh-huh.

22          A.    --- And you have other potential sources  
23       of ignition that you've eliminated, an investigator  
24       that does this job knows that there are the potential  
25       for alternative theories.

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1                   When we have the potential for alternative  
2 theories, meaning that evidence or items need to be  
3 eliminated, that someone else may ask to see those  
4 items, it's incumbent upon me to make sure that those  
5 items are in safe keeping so that they can be  
6 eliminated by someone else if necessary because  
7 inevitably an alternative theory will come up

8                 Q.    Okay, so -- so that I understand your --  
9 your complaint, is it -- are you actually ---

10                MR. WIGGINS:   --- Objection.

11                That's not a complaint.

12                MS. DALY:   Oh, okay.

13                Q.    (Ms. Daly) Let me understand what you are  
14 saying was done inappropriately.

15                Are you saying that -- because there's two  
16 different things.

17                A.    Uh-huh.

18                Q.    One thing is that the evidence, when it  
19 was collected by Agent Royal and set aside ---

20                A.    --- Uh-huh.

21                Q.    --- For a further evaluation by an  
22 electrical engineer. Correct?

23                A.    Well, he set it aside because he couldn't  
24 eliminate it. He didn't know what was coming,  
25 whether it be an electrical engineer or not. But he

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1 set it aside because he could not eliminate it. Yes.

2 Q. Okay, and then Mr. Martini inspected that  
3 evidence that had been collected.

4 A. Uh-huh.

5 Q. Right?

6 MR. WIGGINS: Object.

7 He said he inspected it. He doesn't know  
8 what kind of inspection he did.

9 MS. DALY: Okay.

10 MR. WIGGINS: That's his point, I  
11 think.

12 Q. (Ms. Daly) To your knowledge, Mr. Martini  
13 inspected -- or to your understanding, what you've  
14 been told, Mr Martini inspected the PCB's. Correct?

15 A. His report indicates his -- his first  
16 report to Nationwide indicates that all electrical or  
17 mechanical source -- potential sources of ignition  
18 were examined and eliminated.

19 Q. Okay.

20 A. And in his second -- his expert report, he  
21 indicates that the circuit board was examined and  
22 eliminated.

23 Q. So let's stop there.

24 In general, what is your opinion that an  
25 electrical engineer should have done, what steps

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1 should an electrical engineer have done, in order to  
2 inspect the PCB's ---

3 A. --- In my ---

4 Q. --- To eliminate?

5 A. In my experience ---

6 Q. --- No, in your -- I want to know, in your  
7 expert opinion, what you are going to testify to  
8 under oath and what you are qualified to testify to  
9 under oath, I want to know that list that you are  
10 qualified to give to the jury of what should be done  
11 in an inspection for electrical failure of PCB  
12 boards.

13 A. We've discussed the fact that I'm not an  
14 electrical engineer.

15 Q. Okay, I understand that.

16 A. Okay.

17 Q. But are you testifying that you are  
18 qualified to give, in your expert opinion, what needs  
19 to be done in order to inspect for the electrical  
20 failure?

21 A. No.

22 Q. Okay, so under oath, do you plan on  
23 testifying to the jury what steps should have been  
24 done in order to inspect the PCB's for an electrical  
25 failure or is that something Mr. Stone would be

1       testifying to?

2           A.     Certainly Mr. Stone ---

3           Q.     --- Okay.

4           A.     --- Would be the one.

5           Q.     Are you qualified to testify in your  
6       expert opinion, what steps need to be done to inspect  
7       the PCB's for electrical failure?

8           A.     I'm only qualified or able to testify  
9       about my experience with other processes that I've  
10      been through.

11          Q.     Okay, and when you say other processes,  
12       are you testifying what other experts need to do, but  
13       not what you're qualified to do?

14          A.     I'm just telling you what I have  
15      experienced from other experts.

16          Q.     Okay, what you've experienced other  
17      experts to do?

18          A.     Yes, ma'am.

19          Q.     But not what you're qualified to do?

20          A.     No, ma'am.

21          Q.     Okay, and are you qualified to determine  
22       that an electrical engineer did not perform his or  
23       her duties as an expert, as an electrical engineer  
24       expert?

25          A.     I'm only qualified to say that I don't

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1 know whether or not a person has done their job other  
2 than by my experience with other people, other  
3 experts.

4 And you know, whether or not there's a set  
5 way that every engineer does their job or not, I  
6 can't testify to that. I can only testify to what my  
7 experience has been in the past.

8 Q. Okay, maybe so that we're not talking past  
9 each other -- so let's give the example.

10 If a cardiac surgeon is being sued for  
11 medical malpractice ---

12 A. --- Uh-huh.

13 Q. --- Lawsuit, and the attorney hires  
14 another cardiac surgeon to say that that cardiac  
15 surgeon didn't do X, Y, Z, so that cardiac surgeon  
16 would be an expert and qualified to testify because  
17 he or she would be able to do the exact tasks that  
18 the cardiac surgeon is being sued.

19 So in your situation, I'm trying to be --  
20 have you be clear as to what your testifying to  
21 because you're not an electrical engineer.

22 A. No.

23 Q. So you're not, in this case, the cardiac  
24 surgeon that's being sued or that -- and you're not  
25 the cardiac surgeon who's being retained to say that

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1       this person did something incorrect. And so I'm  
2       trying to figure out where -- what you are qualified  
3       to testify to in front of the jury.

4                   So you're not an electrical engineer and  
5       you're not a mechanical engineer. So you would not  
6       be qualified to look at these PCB's and determine  
7       whether there was an electrical failure or that it  
8       was the source of ignition. Is that correct?

9                  A.     Yes.

10                 Q.     Okay, so what is your testimony today that  
11       you are qualified to do in regards to whether or not  
12       the PCB's were inspected and eliminated as the  
13       ignition source of the fire?

14                 A.     I would have to leave that up to Steve  
15       Stone.

16                 Q.     Okay, thank you. That's all I was trying  
17       to be clear about.

18                   So in your experience, watching other  
19       experts do the elimination of electrical sources,  
20       what has been your experience watching others?

21                 A.     My experience with others is that even  
22       branch circuitry in the area of origin that may be  
23       easily eliminated is still recovered and stored for  
24       further examination.

25                   We spoke about Mr. ---

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1           Q. --- Okay, and you're saying further  
2 examination. Are you saying further examination by  
3 someone else ---

4           A. --- No.

5           Q. --- Or further -- further examination by  
6 the electrical engineer?

7           A. No. I was going to finish that.

8           Q. Okay.

9           A. I was going to say we just spoke about Mr.  
10 Cassell.

11          Q. Uh-huh.

12          A. And in my experience with him, he has  
13 taken branch circuitry that we have examined at the  
14 scene that has been eliminated at the scene and gone  
15 back and gone over under magnification, and has been  
16 unable to eliminate it following those exams.

17                 Mr. Cavarock, and I have worked before on  
18 other cases either together or on separate sides and  
19 he's collected items that even he believed could be  
20 eliminated at the scene but have kept them and gone  
21 back and examined them in the office.

22          Q. And you spoke with Mr. Stone about this  
23 case specifically?

24          A. Yes, ma'am.

25          Q. And did he identify to you any -- the

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1 steps that he said should have been taken regarding  
2 the PCB's?

3 A. Yes, ma'am.

4 Q. And what were those steps?

5 A. He said that they should have been  
6 collected and looked at under magnification for ---

7 Q. --- Anything -- okay.

8 A. --- For the items that he did -- that he  
9 felt like were necessary. He discussed temper  
10 discoloration, and with an exemplar, the heat flux or  
11 transfer of heat inside the -- the board and the  
12 enclosure.

13 And other than that, I don't recall what  
14 other -- what else he said but he did say that it  
15 would be -- he should -- if -- he would have  
16 collected it and examined it under magnification.

17 Q. Anything else?

18 A. No.

19 (12:01-12:03 p.m. - recess)

20 MS. DALY: We can go back on the  
21 record.

22 MR. WIGGINS: Back on the record.

23 Q. (Ms. Daly) So let's go back to the second  
24 theory, that it was incendiary in nature. What facts  
25 did you consider that would lead a cause-and-origin

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1 expert to determine that this fire was incendiary?

2 A. Well, that if all of the electrical  
3 sources of ignition were eliminated.

4 Q. Right.

5 A. And the time frame. And that was all that  
6 there is there as far as evidence.

7 Q. Okay, and what do you mean by time frame?

8 A. The time in which the insured last left  
9 the building until the time the fire was called in.

10 Q. And what about that is relevant to you?

11 A. It's relevant -- there's a time frame  
12 between 8:25 and 8:41 and when -- when the call came  
13 in.

14 Q. Okay. In general, if the fire started  
15 sometime between 8:25 and 8:41 -- and 8:25 is roughly  
16 the time that Mr. Diamantopoulos left the restaurant?

17 A. Uh-huh.

18 Q. Is that the time frame you're using?

19 A. Yes, ma'am.

20 Q. And then 8:41 is the first time that it  
21 was called in.

22 A. Uh-huh.

23 Q. So that means that the smoke was visible  
24 enough ---

25 A. --- Uh-huh.

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1 Q. --- Or the fire was visible enough ---

2 A. --- Uh-huh.

3 Q. --- For a passerby to call it in. Is that  
4 correct?

5 A. Yes, ma'am.

6 Q. In general, if there was an electrical  
7 failure and there was -- the ignition source was  
8 electrical, would you expect there to be smoke or a  
9 scent associated with an electrical failure detected  
10 prior to 16 minutes?

11 A. I don't know. In circum -- the -- this --  
12 the -- there are ultimate -- there are many variables  
13 on that.

14 Q. Okay.

15 A. There's ventilation. There's -- there's  
16 ---

17 Q. --- Well, let's talk about the variables  
18 as it relates to this restaurant.

19 A. Okay.

20 Q. Okay. If there was an electrical failure,  
21 or the source of ignition was this wireless device.

22 A. Uh-huh.

23 Q. What theories do you have that make it  
24 plausible that Mr. Diamantopoulos was in the  
25 restaurant until at least 8:25 ---

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1           A. --- Uh-huh.

2           Q. --- Without detecting any type of scent or  
3 smoke prior to leaving the restaurant?

4           A. Food odors, cleaning supplies. I don't  
5 know -- ventilation.

6           Q. Did you check the ventilation to this  
7 building?

8           A. For? If -- if there's -- I mean, it has  
9 an AC system. I would imagine that it was  
10 functioning.

11          Q. Okay.

12          A. Or a heating system that would circulate  
13 the air.

14          Q. So are you saying because of the specific  
15 ventilation system in this building, that would have  
16 masked any odor of ---

17          A. --- No, only -- only that it would  
18 circulate.

19          Q. Well, if it would circulate -- and this is  
20 just someone speaking from common sense. I mean, if  
21 it would circulate, then it would have circulated it  
22 throughout the building and then it would have been  
23 more detected.

24                   Is there....

25          A. I don't know that that's necessarily true.

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1           Q.    Okay.  So that's what I'm trying to get  
2 you to explain to me.  What about this specific  
3 building would have masked any odor or smoke if there  
4 was this electrical failure of this wireless device?

5           A.    There are food odors.  There are cleaning  
6 supplies odors that could mask it.  I don't know  
7 what's ---

8           Q.    --- Which ones?  What ---

9           A.    --- We're cooking break.

10          Q.    Okay.  Were -- was there anything being  
11 cooked at this time?

12          A.    I -- I don't know if there was or not.

13          Q.    So I'm assuming you did not ask Mr.  
14 Diamantopoulos.

15          A.    I did not ask.

16          Q.    If there was nothing being -- if he has  
17 testified that there was nothing being cooked at this  
18 time, would that eliminate the potential of food odor  
19 masking the odor from the electrical failure of this  
20 wireless device?

21          A.    I don't know if it would not -- mask it or  
22 not.

23          Q.    Okay.

24          A.    What -- I'm just -- no, he did not dis --  
25 he did not smell anything.  He said that.

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1           Q.     Right.

2           A.     And I don't know why he didn't smell it if  
3     it was happening. Whether it was happening or not I  
4     don't know. I don't know what could have masked it  
5     other than the potential that there was a food  
6     product that masked it. I walked in -- I -- I worked  
7     in a restaurant as a kid. There were always odors in  
8     a restaurant. I don't know if it was enough to -- to  
9     mask a -- a -- smoke or not, or the odor. I just  
10    don't know.

11          Q.     Okay. So if there was a food odor, then  
12    that would have masked the odor. What would mask  
13    smoke?

14          A.     Visual smoke?

15          Q.     Uh-huh.

16          A.     I don't know that you could mask visual  
17    smoke.

18          Q.     Okay. And did you ask Mr. Diamantopoulos  
19    if he saw ---

20          A.     --- Yes.

21          Q.     --- Any smoke?

22          A.     No.

23          Q.     And what did he say?

24          A.     He said no.

25          Q.     In general, if there was an electrical

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1 failure, would you have expected there to be smoke?

2 A. If there was -- if -- if pyrolysis was  
3 incurring and -- yes, I would expect there to be some  
4 smoke. I don't know how much. I have had -- I have  
5 personally set fires in -- in cars which have -- and  
6 in the beginning of them there's very, very little  
7 visible smoke. I just don't know what would have  
8 been there.

9 Q. Okay.

10 A. Or what....

11 Q. Have you ever set fire -- have you ever  
12 purposefully had an electrical fire?

13 A. Yes.

14 Q. Okay, and when you purposefully set an  
15 electrical fire, did you see smoke?

16 A. Yes.

17 Q. So you said food odor and the ventilation.

18 A. Or cleaning supplies. I just don't know.

19 Q. Okay. What cleaning supplies, in your  
20 experience, masks ---

21 A. --- I don't know that they're masking ---

22 Q. --- An electrical ---

23 A. --- I don't know that they mask them or  
24 not. I just know that they're there and that  
25 cleaning supplies have odors. I know that people

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1 have sensitive noses for certain things and not  
2 others. And I just don't know what he could or could  
3 not have detected. I just don't know.

4 Q. Well, so that we're clear on your  
5 testimony, is it your testimony that -- it's not your  
6 testimony that this wireless device was on fire.  
7 Correct?

8 A. That's right.

9 Q. Okay. It's just one of your  
10 hypotheticals.

11 A. It's a hypothesis, yes, that -- it's my hy  
12 -- it is a hypothesis, that it could be potentially  
13 failing, yes. I don't know whether it did or not.

14 Q. Uh-huh.

15 A. But it is part of something that I needed  
16 to consider.

17 Q. Okay. So in considering whether or not  
18 this wireless device caught on fire, one common-sense  
19 thing would be to ask was there smoke ---

20 A. --- Uh-huh.

21 Q. --- Was there an odor. Correct?

22 A. Yes.

23 Q. Okay. So you asked Mr. Diamantopoulos if  
24 there was an odor.

25 A. Uh-huh.

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1 Q. And he said no. Correct?

2 A. That's right.

3 Q. And you asked him if there was smoke and  
4 he said no. Correct?

5 A. That's right.

6 Q. And it's not your testimony that cleaning  
7 supplies eliminated the odor of an electrical  
8 failure. Is that correct?

9 A. No, it's definitely not.

10 Q. And it's not your testimony that the food  
11 odor masked the odor from an electrical failure.

12 A. No.

13 Q. And it's not your testimony that the  
14 ventilation system masked any smoke or odor from an  
15 electrical failure.

16 A. No. It's only something that I would  
17 consider ---

18 Q. --- Okay.

19 A. --- As to whether or not it was or could  
20 be detected.

21 Q. Okay, so you considered it.

22 A. Uh-huh.

23 Q. And so what did you find about the food  
24 odor?

25 A. I don't know that it could or could not

Page 100

1 have masked the odor.

2 Q. And what did you find about the cleaning  
3 supplies?

4 A. The same. I don't know whether or not it  
5 could or could not have masked the odor.

6 Q. And what did you find about the  
7 ventilation system?

8 A. I don't know whether it could or could not  
9 have masked the odor.

10 Q. So when you say that you don't know  
11 whether or not it could or could not have masked the  
12 odor ---

13 A. --- Uh-huh.

14 Q. --- Are you testifying that it's more  
15 likely than not that the food odor masked the odor  
16 from the electrical failure?

17 A. No. I'm only testifying that it was not  
18 detected. And I don't know whether or not it could  
19 have been detected or not.

20 Q. Okay. So you say the time frame. Have  
21 you -- you said that he left at 8:25.

22 A. Uh-huh.

23 Q. If there is testimony that he left at 8:35  
24 ---

25 A. --- Uh-huh.

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1 Q. --- And the fire was called in at 8:41 ---

2 A. --- Uh-huh.

3 Q. --- Does -- if you accept that fact as  
4 true ---

5 A. --- Uh-huh.

6 Q. --- That he left at 8:35 and the fire was  
7 called in at 8:41 ---

8 A. --- Uh-huh.

9 Q. --- Does that increase the likelihood that  
10 Mr. Diamantopoulos set this fire?

11 A. It increases the likelihood that he was  
12 very intimate to the ignition, yes, ma'am, in other  
13 words, very intimate at the inception of the fire,  
14 very close, or would have known that it was ignited,  
15 yes, ma'am.

16 Q. Okay.

17 A. Does that make sense? That's a -- that's  
18 a phrase that we've used in the past, very intimate  
19 to -- and has intimate knowledge of the ignition of  
20 the fire. Does that make sense?

21 Q. Yes, it does.

22 A. Okay.

23 Q. So that I can break it down to my terms,  
24 instead of saying that he was very intimate with the  
25 fire -- I'm going to repeat my question.

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1                   If the testimony that Mr. Diamantopoulos  
2 was seen at the restaurant at 8:35 and the fire was  
3 called in at 8:41 ---

4                 A. --- Uh-huh.

5                 Q. --- Does that fact make it more likely  
6 that Mr. Diamantopoulos was present when the fire was  
7 started?

8                 A. It would increase the likelihood, yes,  
9 ma'am.

10                Q. Would it make it more likely than not that  
11 Mr. Diamantopoulos was present when the fire started?

12               A. Yes, ma'am.

13               Q. So you mentioned the time frame.

14               A. Uh-huh.

15               Q. The fact that the fire started at 8:25 --  
16 excuse me. I apologize.

17                   The fact that the fire -- that Mr.  
18 Diamantopoulos was in the restaurant at 8:25 ---

19               A. --- Uh-huh.

20               Q. --- And the fire was called in at 8:41 ---

21               A. --- Uh-huh.

22               Q. --- If you take Mr. Diamantopoulos'  
23 version of the facts as true ---

24               A. --- Uh-huh.

25               Q. --- That there was no odor, there was no

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1 smoke, there was no detection of a fire at the time  
2 that he left the building ---

3 A. --- Uh-huh.

4 Q. --- What is the probability that Mr.  
5 Diamantopoulos was in the restaurant at the time of  
6 the inception of the fire?

7 A. Well, it's either probable or not. And I  
8 don't know whether or not that time frame is  
9 sufficient for him -- for a fire to develop to that  
10 point or not. His time frame allows a little bit  
11 more time. I don't know whether it's sufficient  
12 enough to develop that fire to the point that -- when  
13 it was discovered or not. It's possible. But I  
14 don't know that it's probable.

15 Q. Is it more likely than not that the fire  
16 was started before Mr. Diamantopoulos left the  
17 building at 8:25?

18 A. I don't know. It's either -- it -- it's  
19 possible or probable.

20 Q. Right.

21 A. And it's -- I don't have enough data to  
22 say that it's probable.

23 Q. So if we start at 50-50, is it a 50-50  
24 shot that Mr. Diamantopoulos was in the building at  
25 the time the fire was started if he left at 8:25?

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1           A. Yes. There's two theories. One is that  
2 and one is the other.

3           Q. Okay.

4           A. And we're at 50-50.

5           Q. We're at 50-50.

6           A. Uh-huh.

7           Q. Okay. So we have a 10-minute window. Mr.  
8 Diamantopoulos claims he left the building at 8:25 --  
9 or roughly -- I mean, he has testified, so we can use  
10 whatever he says. But let's go with 8:25, which  
11 seems to be -- is that from your notes ---

12          A. --- It's from my notes, yeah.

13          Q. --- Of what he told you? Okay.

14          A. And from the -- I -- I believe the EUO  
15 says that ---

16          Q. --- Okay.

17          A. --- Yeah.

18          Q. Okay. And 8:35 is the testimony from a  
19 witness that puts Mr. Diamantopoulos at the  
20 restaurant.

21          A. Yes.

22          Q. Okay.

23          A. And Mr. Lacy's notes from his  
24 investigation as well.

25          Q. Okay, have you interviewed, Mr. Lapene,

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1 the manager of Cycle Gears?

2 A. No, ma'am.

3 Q. Were you aware that Mr. Lapene has  
4 testified that Mr. Diamantopoulos was at the  
5 restaurant at 8:35?

6 A. I was aware initially that he was  
7 interviewed. And then after seeing Mr. Lacy's expert  
8 report I did -- I was aware that he was deposed, yes.

9 Q. Okay, and did you see that it was at 8:35  
10 that he said that Mr. Diamantopoulos -- excuse me.  
11 Strike that.

12 So if Mr. Diamantopoulos left the  
13 restaurant, the scene of the fire, at 8:25 and the  
14 fire was such that a passerby could see it from the  
15 road at 8:41 ---

16 A. --- Uh-huh.

17 Q. --- You said it's about a 50-50 shot that  
18 Mr. Diamantopoulos was in the building at the set of  
19 the fire.

20 A. I -- that's not exactly what I ---

21 Q. --- Start of the fire. Okay.

22 A. What I meant was is that they're 50-50  
23 between two different potential ignition sources.

24 Q. And the two different potential ignition  
25 sources, what would they be?

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1           A. They would be an incendiary fire or the  
2 Ion IQ, which has not been eliminated, or which I  
3 have not -- or the electrical on -- or excuse me --  
4 which I have not or Steve Stone has not been able to  
5 eliminate.

6           Q. Okay. If Mr. Diamantopoulos was in the  
7 building at 8:35 ---

8           A. --- Uh-huh.

9           Q. --- And left the building at 8:35, is it  
10 more likely than not that the fire was incendiary in  
11 nature?

12          A. Yes.

13          Q. And explain to me why that is.

14          A. Because it's unlikely that the fire would  
15 develop within the time frame that it would take to  
16 be observed by passersby.

17          Q. And when you say it's unlikely that it --  
18 the fire would have been developed for a passerby to  
19 notice ---

20          A. --- Uh-huh.

21          Q. --- If it was from the Ion IQ.

22          A. I think any ignition source.

23          Q. Or any ignition source.

24          A. Right.

25          Q. Okay. Other than incendiary.

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1                   A.     No. I think that if -- if -- I think the  
2 fire could not have developed in that seven minutes.

3 Q. Okay. Without Mr. Diamantopoulos noticing  
4 it if he was in the building.

5 A. Yes, ma'am.

6                   Q.     Okay.   So I want to step -- I want to walk  
7 back minute by minute ---

8 A. --- Uh-huh.

9                   Q. --- And you explain to me where -- at what  
10 point in time could Mr. -- could this fire have  
11 started and Mr. Diamantopoulos not been aware of it  
12 and him get out of the building. If it's 50-50 at  
13 8:25, once he leave -- once -- if it's 8:26, it's  
14 obviously more likely than if it was at 8:25. Is  
15 that....

16                   A.     My answer to that is is that how quickly  
17    this fire developed is subjective ---

18 O. --- Uh-huh.

19               A. --- Because of the fuel packages and their  
20 orientation. I don't know how long it would take  
21 from the actual ignition of the first fuel package to  
22 the secondary fuel package -- would take. They're  
23 very high-heat-release-rate fuels. They could  
24 produce a fire that developed very quickly.

25                   Christmas trees -- very -- you know, I

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1 don't know if it's similar or not to the heat release  
2 rate, because I can't answer that question. But I  
3 have seen in studies of Christmas trees a room going  
4 to full-room involvement and flashing over in 90  
5 seconds.

6 So I don't know how quickly that fire  
7 progressed. All I -- all I have said is is that we  
8 have two potential ignition sources that could  
9 develop a fire with -- and it would be very difficult  
10 for it to develop in seven minutes. It's not  
11 impossible but it would be very difficult for it to  
12 develop within seven minutes to where it would be  
13 visible by the outside. We don't -- it's not  
14 ventilation limited and it's not fuel limited. So it  
15 would have been a free-burning fire.

16 Q. Even if Mr. Diamantopoulos left at 8:25,  
17 would it have still been very difficult for the fire  
18 to get to the point that it was visible to passerbys  
19 between 8:25 and 8:41?

20 A. I don't know that that's the case, no.

21 Q. Okay. How about between -- okay, so you  
22 say in six minutes, 8:35 to 8:41, it would be very  
23 difficult.

24 A. It'd be difficult, not ---

25 Q. --- How about -- I know not impossible ---

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1 A. --- Uh-huh.

2 Q. --- But difficult. I get that.

3 So how about between 8:30 and 8:41? In 10  
4 minutes to 11 minutes, would that be difficult?

5 A. I don't know.

6 Q. Okay.

7 A. I'm ---

8 Q. --- So your opinion changes sometime  
9 between 8:30 and 8:35?

10 A. It's not an opinion change. I'm just  
11 telling you that it's more difficult with the less of  
12 a time frame.

13 Q. Okay.

14 A. Okay. The shorter the time frame gets,  
15 the more difficult it is.

16 Q. Okay.

17 A. The longer the time frame, the greater the  
18 possibility that something else occurred. The reason  
19 that I feel the way that I do is because I don't know  
20 the exact time frame. And we have something that the  
21 engineer that I dealt with and myself have not been  
22 able to look at and eliminate. And we have a time  
23 frame that is short but we have a poss -- we have  
24 possibilities of something else. And that is all I  
25 can say.

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1 Q. Did you ever watch the Walmart video?

2 A. I did.

3 Q. And you watched it since you wrote your  
4 report?

5 A. Yes, ma'am.

6 Q. Okay. What did you find significant about  
7 the Walmart video?

8 A. That the engine arrived as described at --  
9 what was it? It was 8:46.

10 Q. Uh-huh.

11 A. And I noticed that at 9:07, which was  
12 listed in Ms. Locklear's notes, that I can't see any  
13 emergency vehicle arriving at that time. So I don't  
14 know where she came up with that. But -- but the  
15 engine did arrive at 8:46. And it is consistent with  
16 the CAD report. It is consistent within a short  
17 period of time in the video's time stamp.

18 Q. And what else was significant about the  
19 Walmart video to you ---

20 A. --- That Mr. ---

21 Q. --- As an investigator?

22 A. That Mr. Diamantopoulos drove in front of  
23 the building at -- I believe it was 8:42.

24 Q. Had Mr. Diamantopoulos ever told you  
25 during his interview that he had driven in front of

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1 the Walmart ---

2 A. --- No, ma'am.

3 Q. --- At 8:42?

4 A. No, ma'am.

5 Q. Did you ever see in any of his testimony  
6 under oath that he had driven in front of the Walmart  
7 building ---

8 A. --- Not that ---

9 Q. --- At 8:42?

10 A. Not that I recall.

11 Q. Are you familiar with that -- the  
12 geographical location?

13 A. Oh, yeah.

14 Q. Okay.

15 A. I'm from here.

16 Q. Okay. In the video were you able to see  
17 the smoke or fire from the building?

18 A. I was not, no.

19 Q. Okay. When you saw the video, what did  
20 you do after watching the video?

21 A. I think I sent an email to Mr. Wiggins and  
22 Trey McLean indicating that the time frame on Mr.  
23 Lacy's report and the time stamps were correct.

24 Q. Okay. Did you ever have a discussion with  
25 Mr. Wiggins?

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1           A. Actually, I think that after I sent the  
2 emails I did not get a return call, which I was  
3 pretty surprised about. But other than that ---

4           Q. --- Okay.

5           A. --- I don't -- I -- I did discuss the fact  
6 that I felt like that the times were right on and  
7 that narrows the time frame from my report with the  
8 time discrepancy that appeared to be there. It  
9 eliminated that.

10          Q. Okay. What other significance did the  
11 video have for you?

12          A. That I thought that it was interesting  
13 that Mr. Diamantopoulos was in front of Walmart  
14 within minutes of the fire engine arriving.

15          Q. And why is that significant to you?

16          A. Because he said he was elsewhere.

17          Q. Does that -- did you ever have a  
18 discussion with anyone -- other than the email --  
19 with anyone about the Walmart video and what you saw  
20 in it?

21          A. Yes. I told Mr. Wiggins and Mr. McLean  
22 that that -- I thought that it was odd that he was in  
23 front of the building within minutes of the engine  
24 arriving.

25          Q. Anything else?

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1           A.     Maybe ---

2           Q.     --- Was that your choice word, was that it  
3     was odd?

4           A.     Uh-huh.

5           Q.     That's a....

6           A.     I think I said that. I think I said odd.  
7     But it's -- it -- it would be contrary to his  
8     testimony.

9           Q.     Okay, so you explained that it'd be  
10   contrary to his testimony.

11          A.     Uh-huh.

12          Q.     Because obviously in your report you said  
13   something different.

14          A.     Yes.

15          Q.     Okay. So what you're saying today is more  
16   accurate because you reviewed the video yourself.

17          A.     Yes, ma'am.

18          Q.     Okay. So I'm not going to go through your  
19   report.

20                   And your choice word was that it was odd?

21          A.     Uh-huh.

22          Q.     And interesting.

23          A.     Uh-huh.

24          Q.     Anything else?

25          A.     I don't think I said anything else.

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1 Q. Did you say anything else?

2 A. I don't think that I did.

3 Q. Okay. What was the comments back to you?

4 A. I think Trey said something like I don't  
5 know why he was in front of the building either. And  
6 I felt like that we needed to have an answer to that.

7 Q. Did you ever talk to Mr. Diamantopoulos?

8 A. I did not. I was not asked ---

9 Q. --- Do you know whether or not the  
10 attorneys ever talked to Mr. Diamantopoulos?

11 A. I don't know.

12 Q. Did you ask them to talk to him?

13 A. I told them that it would be a good -- a  
14 good idea to talk to him and find out why he was in  
15 front of the building, yes, ma'am. I think -- I  
16 think we discussed that earlier on, was to find out  
17 why he had been in front of the building, because it  
18 was pretty -- I think it was absolutely clear from  
19 the beginning that there was a video of the Walmart  
20 parking lot and we needed to have the information as  
21 to what that included.

22 Q. What is the significance of the time frame  
23 that Mr. Diamantopoulos was at the Walmart parking  
24 lot at 8:42? What's significant of that fact? What  
25 is the -- strike that.

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1                   What is the significance of that fact to  
2 you as an investigator?

3                 A.    That he was in close proximity to the  
4 building when the fire was called in, and that it  
5 would support the fact that he had been in the area  
6 since he left as opposed to driving away immediately.  
7 I don't know where he went, but it would suggest  
8 that.

9                 Q.    Does it also support -- strike that.

10                 Does it make it more likely -- that fact  
11 make it more likely that the fire was incendiary?

12                 A.    I don't think it makes it more likely that  
13 it was. I think it makes it more like -- I think it  
14 makes -- I think it makes it likely that he has not  
15 communicated this -- I'm -- well, that's -- excuse  
16 me. Let me step back. I think that he has not said  
17 the same story every time.'

18                 Q.    Uh-huh. Are you aware of -- strike that.  
19 I'll get back to that when I get to your report.

20                 Okay, what other facts were significant in  
21 your investigation when you were trying to determine  
22 whether or not the cause and origin of this fire was  
23 incendiary versus the electrical wireless device?

24                 A.    Any other circumstantial ---

25                 Q.    --- Catching on fire.

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1           A. Any other circumstantial facts or evidence  
2 would be considered following a cause determination.

3           Q. Okay, and what -- and that's what I want  
4 to get from you.

5           A. Uh-huh.

6           Q. What other circumstantial facts were  
7 important to you?

8           A. Financial information would be -- if I was  
9 doing the entire investigation, which I did not -- I  
10 did a origin-and-cause investigation. I did not do  
11 the follow-up investigation. In other words ---

12          Q. --- Can -- yeah. Can you explain that to  
13 me?

14          A. In other words, I isolated my  
15 investigation to the examination of the evidence at  
16 the scene and the collected evidence and the EUO's to  
17 determine the time frame, to determine what he had  
18 done in the building prior to leaving, and how long  
19 he was there. And that was the scope of my  
20 investigation.

21          Q. Would it have been appropriate for you to  
22 do a follow-up investigation into financials or any  
23 other circumstantial evidence that could help in  
24 determining the cause and origin of the fire?

25          A. I think that that's outside of the

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1 forensic evidence and it's not part of the actual  
2 cause determination. It's only supportive of a cause  
3 determination.

4 Q. Okay. And it's supportive but it's ---

5 A. --- It's an indicator.

6 Q. An indicator.

7 A. It's an indicator.

8 Q. Okay. But you did not do that part of the  
9 investigation. Correct?

10 A. No, ma'am.

11 Q. And was that because of financial reasons  
12 based on the plaintiff's financial status?

13 A. I have no idea. I was not asked to do it.

14 Q. Okay. And you would have only done it if  
15 -- if they would have asked you to have done it,  
16 would you have done it?

17 A. Absolutely.

18 Q. Okay. So if they would have asked you to  
19 do a full investigation into the cause and origin of  
20 this fire, what is everything else you would have  
21 done if you were asked to do so?

22 A. I would have -- I would have checked  
23 records. I would have checked the ---

24 Q. --- What records?

25 A. Criminal records, civil records. I would

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1 have checked the -- followed -- I would have followed  
2 up on any complaint that had been made.

3 Q. By whom?

4 A. By Mr. Lapene, in other words, his  
5 statement. I would have interviewed him. I would  
6 have interviewed the employees. I would have -- I  
7 would have checked on -- or I would have gone to  
8 interview every fire official that was involved. I  
9 would have interviewed Chad Royal. I would have done  
10 a more -- I would have done more as far as the video  
11 goes. I would have attempted to review that earlier  
12 on. I would have done a -- a number of things to --  
13 to just collect data.

14 Q. Talked to the IRS?

15 A. I would have.

16 Q. Talked to the waste services?

17 A. I would have.

18 Q. Anything else?

19 A. Not that I can think of at the moment, but  
20 I'm sure there something. It depends on what I was  
21 told by each one of those individuals, how -- if they  
22 told me something that I needed -- that I felt like  
23 was important and I needed to follow up on, I would  
24 have.

25 Q. For a lay person's -- you know, not a lot

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1 of people have heard of cause-and-origin experts but  
2 they have heard of detectives.

3 A. Uh-huh.

4 Q. You know, that's a common term.

5 A. Uh-huh.

6 Q. Common thing you see in movies.

7 Your investigation as a -- a fire  
8 investigation, is it similar to what you did as a  
9 detective when you were investigating the cause and  
10 origin of a fire?

11 A. The origin and cause portion ---

12 Q. --- Uh-huh.

13 A. --- Is very similar.

14 Q. Uh-huh.

15 A. The rest of it is not.

16 Q. Okay. So what rest of it's not?

17 A. In other words, the follow-up that I've  
18 just discussed there.

19 Q. Okay.

20 A. That is only done at the request of my  
21 clients.

22 Q. Right. And so that's your limitation.

23 A. Yes, ma'am.

24 Q. Is only if you are requested.

25 A. That ---

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1           Q. --- Because then you won't get paid for it  
2 if you do it without the request.

3           A. Well, yeah. I ---

4           Q. --- Okay.

5           A. But, I mean, I'm -- I do what I'm told.

6           Q. Right. And I get that.

7           A. Okay.

8           Q. Okay. Why didn't you review the  
9 depositions?

10          A. I wasn't given the depositions.

11          Q. Have you ever been told any of the  
12 testimony given by Mr. Diamantopoulos in his  
13 subsequent deposition?

14          A. No, ma'am.

15          Q. Were you aware of any of the statements  
16 Mr. Diamantopoulos gave outside of his EUO?

17          A. To whom?

18          Q. To anyone.

19          A. No.

20          Q. Have you ever read his statement to the  
21 investigating police officer on the scene?

22          A. No, ma'am.

23          Q. Did you see the police report in this  
24 case?

25          A. Yes.

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1           Q.     Okay. But you have not seen the interview  
2 with Mr. Diamantopoulos.

3           A.     No, ma'am.

4           Q.     Did you ever have a conversation with  
5 Detective House in this case?

6           A.     No. I called and left a message and he  
7 didn't return my call.

8           Q.     Any other facts about this case or  
9 circumstantial evidence that would lead a  
10 cause-and-origin expert to determine the fire to be  
11 incendiary?

12          A.     Any other facts about this case?

13          Q.     Uh-huh.

14          A.     Not that I can think of that we haven't  
15 discussed.

16          Q.     I know we discussed earlier the fact that  
17 Ms. Moon testified about the relocation of the bread  
18 rack.

19          A.     Uh-huh.

20          Q.     Would that have been something you would  
21 have considered?

22          A.     I would have considered it as a -- as  
23 contrary to Mr. Diamantopoulos' statement, yes.

24          Q.     And so that the record's clear, did you  
25 ever talk to Mr. Michalos, the other owner of the

Page 122

1 building?

2 A. No, ma'am.

3 Q. Okay. And did you ever look into the  
4 financial records of this company?

5 A. No. Only what was discussed in the EUO's.  
6 I just read that.

7 Q. Okay. I just have a few questions about  
8 your report.

9 A. Okay.

10 Q. Did you talk to any of the firefighters  
11 who were present at the scene of the fire ---

12 A. --- No.

13 Q. --- Regarding the origin of the fire?

14 A. No.

15 Q. Why?

16 A. I wasn't asked to interview them.

17 Q. Do you know where the firefighters  
18 determined the origin of the fire to be located?

19 A. In the area of the rear drive-thru window.

20 Q. And is that all you know ---

21 A. --- Yes.

22 Q. --- About the placement?

23 A. Uh-huh. The -- Mr. Lacy's report  
24 describes clearly what they saw coming in and I have  
25 no reason to dispute that.

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1 Q. We'll go through Mr. Lacy's report ---

2 A. --- Okay.

3 Q. --- In detail to determine what you do  
4 dispute ---

5 A. --- Okay.

6 Q. --- And what you don't dispute.

7 A. All right.

8 Q. Let's start with your summary of cause and  
9 origin on page two of your expert report.

10 You state that the fire originated in the  
11 area around the set of metal shelves located along  
12 the wall separating the restaurant office and the  
13 hallway connecting the two drive-thru windows.

14 Is that still your opinion?

15 A. Yes, ma'am.

16 Q. The set of metal shelves you're  
17 referencing, are those the metal shelves that housed  
18 the styrofoam plates and cups that you referenced  
19 earlier?

20 A. Yes.

21 Q. Okay. How did you determine that that was  
22 the origin of the fire?

23 A. Based on the patterns and fire progression  
24 in that -- from that area.

25 Q. Okay. Were you able to determine from the

Page 124

1 fire patterns whether or not the fire -- where along  
2 the wall, the spectrum of the wall the fire started?

3 A. I don't feel like there was enough data to  
4 make that determination based on the fuel package.

5 Q. So it's your opinion you cannot determine  
6 where on the wall the fire started.

7 A. I don't believe that I can determine  
8 whether it was floor level or above. It could have  
9 been above. It could have been at floor level. I  
10 just don't know that there's enough data to tell  
11 that.

12 Q. Okay. So that I'm clear, when you say  
13 above, are you saying above floor level?

14 A. Uh-huh.

15 Q. Okay.

16 A. Yes, ma'am.

17 MS. DALY: I'm going to mark this as  
18 Exhibit 4.

19 (\* Exhibit 4 was marked \*)

20 MS. DALY: Do you need me to go  
21 through this and get you a copy, Mr. Wiggins?

22 MR. WIGGINS: No, that's okay.

23 Q. (Ms. Daly) So we're looking at Exhibit 4,  
24 which is photograph 16.

25 When you say that the origin was in this

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1 rear drive-thru window, can you mark with this blue  
2 pen the possibility of where it started.

3 You say it's above floor level, so it's at  
4 floor level or above. And you testified earlier that  
5 it was below the ceiling.

6 A. Uh-huh.

7 Q. So mark on this picture where you believe  
8 the origin of the fire was.

9 A. I can give you an ---

10 Q. --- The ---

11 A. --- I can give you an area.

12 Q. Okay.

13 A. And that's the best I can do.

14 Q. Then give me the area.

15 (Witness marked document)

16 Q. So in your opinion it's -- it could not  
17 have started anywhere above the wireless device.

18 A. Don't believe so. There wasn't even any  
19 fuel above that.

20 Q. Okay. And it didn't start under the  
21 floor.

22 A. No, clearly not. You're right.

23 Q. Okay. So you -- well, you have it on the  
24 floor.

25 A. I do.

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1           Q.     So I want to be very clear.

2           A.     Okay.

3           Q.     So can you write what this area is  
4 indicating? And if it's okay, I'm going to go over  
5 this area with a black marker so that we can see it a  
6 little better.

7                         And write on the side what that box  
8 indicates.

9           A.     Okay. And -- well, it's only a portion of  
10 the area of origin but I'm going to write area of  
11 origin because that depicts a portion of it. The  
12 area of origin includes that shelf.

13          Q.     Okay.

14          A.     Okay.

15          Q.     Well, then you can circle the shelf as  
16 well if you ---

17          A.     --- I can't see the shelf. It's only a  
18 vertical picture.

19          Q.     Okay.

20          A.     So if we had an -- you know, if you had a  
21 picture showing the wall from the other direction, we  
22 would ---

23          Q.     --- Okay.

24          A.     It -- it -- what I'm trying to explain is  
25 this -- the area includes the entire shelf.

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1 Q. Okay.

2 A. Okay.

3 (Witness marked document)

4 MR. WIGGINS: Let me see what you've  
5 got on here.

6 Q. (Ms. Daly) So that we are clear, the fire  
7 could have started on the shelf itself.

8 A. Could have.

9 Q. Or it could have started on the floor, or  
10 it could have started anywhere along that wall, all  
11 the way up above the wireless device.

12 A. Yes, ma'am. To the wireless device.

13 Q. To the wireless device.

14 I want you to explain to me what about  
15 this fire pattern supports -- the first support I  
16 want you to give me is what supports that this fire  
17 started at the floor level.

18 What about this fire pattern in all the  
19 pictures that you've looked at in addition to this  
20 picture?

21 And if you need to look at your pictures,  
22 please feel free to do so.

23 Give me all the evidence that supports,  
24 based on the fire pattern and anything else that you  
25 would use, to determine where this fire started.

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1           A. There's a fire pattern of fire damage from  
2 floor level upward to include the dimensions of the  
3 shelf in that area and patterns on the floor of pla  
4 -- what appears to be plastics that puddled on the  
5 floor.

6           Q. Okay, and why does that support that the  
7 fire started on the floor?

8           A. Okay. What it supports is is that we had  
9 a fire at floor level of great intensity.

10          Q. Okay.

11          A. That's what it supports.

12          Q. In general, is the intensity level of the  
13 fire greater at its ignition source or somewhere  
14 else?

15          A. Sometimes it is. Sometimes it's not. It  
16 de ---

17          Q. --- Okay.

18          A. Okay. Sometimes it is. Sometimes it's  
19 not. It depends on what the secondary fuel package  
20 is and how it develops from there.

21          Q. Okay. So in this picture explain -- you  
22 say that -- or at this fire scene -- that the --  
23 there's great intensity at the floor level.

24          A. Uh-huh.

25          Q. Based on your review of the scene, what

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1 area had the greatest intensity?

2 A. Right in the corner. And the -- the only  
3 -- the only way ---

4 Q. --- Okay. When you say right in the  
5 corner, I want you to be very precise.

6 A. Okay.

7 Q. Where in the corner?

8 A. The corner of the wall separating the  
9 office from the drive-thru area and the exterior  
10 wall, so in other words, the exterior wall where the  
11 drive-thru window is, headed towards the rear of the  
12 building and the office -- office wall, that corner.

13 Q. Okay, and is that as precise as you can  
14 be?

15 A. That's as precise as I can be. And that's  
16 based on the degree of damage -- well, the fact that  
17 the tile grout was so loose in that area and I was  
18 able to remove so much more of the tile in that area  
19 would indicate that it had a higher heat  
20 concentration in that area. And that's why I would  
21 say that received the most amount of heat.

22 Q. Okay.

23 A. The walls were -- excuse me -- were  
24 covered with -- with fiberglass board and sheetrock.  
25 So a majority of the combustible materials in the

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1 wall were -- were undamaged ---

2 Q. --- Uh-huh.

3 A. --- Because they were protected.

4 Q. So going back to my original question,  
5 what other evidence from the fire scene supports that  
6 the fire started at floor level?

7 A. The evidence that I'm describing doesn't  
8 necessarily say that it started at floor level. It's  
9 saying that we had a fire on the floor level of great  
10 intensity. I don't know -- I don't have enough data  
11 to say that it started at floor level.

12 Q. Okay. My question to you is I want to  
13 know what about the fire pattern and any other  
14 evidence would -- from your investigation supports  
15 the fire starting at floor level.

16 A. The fact that it's in that corner, in that  
17 area, and that we have eliminated the electrical  
18 sources of ignition midway up on the wall. In other  
19 words, the -- the receptacles and the branch circuits  
20 in that area that are potential sources of ignition  
21 have been eliminated. That would indicate that it  
22 would either be below that or above that.

23 And so my evidence would be the degree of  
24 damage and heat intensity at floor level and the fact  
25 that we've eliminated the electrical sources of

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1 ignition midway in the wall.

2 Q. Anything about the fire pattern itself ---

3 A. --- The fire ---

4 Q. --- That would indicate that the fire  
5 started at floor level?

6 A. The majority of the fire patterns were  
7 destroyed by overhaul. The -- the -- the fiberglass  
8 wall covering was taken away from the wall. So -- so  
9 the intensity that it received on the base of the  
10 floor was -- was -- it was removed. Now, the  
11 aluminum cart shows damage at floor level, or lower  
12 level, I should say, and -- and that would be where  
13 it received its most heat.

14 Now, whether or not that indicates that  
15 the fire started at floor level or that that's where  
16 the greatest heat occurred I can't say.

17 Q. All right. But that's a piece of  
18 circumstantial evidence that you would have to  
19 consider.

20 A. It -- well, it's physical evidence.

21 Q. Right. I'm sorry.

22 A. And it's that ---

23 Q. --- Physical evidence.

24 A. It's physical evidence that's there and  
25 it's observable and it would have to be taken into

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1 account. But also the fuel load would have to be  
2 taken into account and how the fuel load would have  
3 burned.

4 Q. Okay, and what about the fuel load and how  
5 it burned would support that the fire started at  
6 floor level?

7 A. I don't know that there's enough data to  
8 say.

9 Q. Okay. What would you consider?

10 A. I don't -- I don't have anything that I  
11 would consider. There's not enough data to make a  
12 determination on that, the reason being is is because  
13 there are plastics and they're -- when they combust,  
14 when they -- they melt, they melt and puddle.

15 Q. Uh-huh.

16 A. And this is an open shelf with a lot of  
17 ventilation and slats in it which can -- that just  
18 drip right through, which means that once it starts  
19 to drip right through, everything can ignite. And at  
20 that point the greatest heat development will be at  
21 low level whether the fire started up higher or not.  
22 And that's why I don't have enough data to say one  
23 way or another.

24 Q. And then what evidence -- anything else?  
25 Anything else you considered to -- in your

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1 determining -- because -- and correct me if I'm  
2 wrong. You do consider whether or not the -- the --  
3 where the fire started, not just the general  
4 location.

5 A. Yes, ma'am.

6 Q. You're looking to see did it start on the  
7 wall, did it start above ceiling, did it start below  
8 ground.

9 A. Yes, yes.

10 Q. That's something you do consider.

11 Correct?

12 A. Yes, ma'am, yes.

13 Q. Okay, so I want to know every single fact  
14 you considered when you were trying to determine  
15 whether -- where this fire started. And so I'm going  
16 to break it up because I'm going to get -- I'm going  
17 to keep going higher. So I want to start at the  
18 floor level.

19 What facts, physical evidence, anything  
20 that you looked at did you put under, okay, the  
21 origin of this fire started at ground level?

22 A. I considered whether it had started at --  
23 at floor level. I did not believe there was enough  
24 data to support that determination because of the  
25 fuel package and what it could do during its fire

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1 progression.

2 Q. But what data did you look at?

3 A. I looked at the floor patterns and I  
4 looked at the wall. And there wasn't enough data to  
5 support that.

6 Q. Anything else?

7 A. No.

8 Q. So you just looked at those and then you  
9 moved on.

10 A. I looked at the branch circuitry.

11 Q. Okay.

12 A. And we eliminated that. I didn't see  
13 anything that would say that the fire started there.

14 Q. Okay. Anything else when you were trying  
15 to determine did the origin of the fire start at  
16 ground level?

17 A. No, I don't think so.

18 Q. Okay. How about the metal shelf?

19 A. Uh-huh.

20 Q. Did you consider whether or not the fire  
21 started on this metal shelf?

22 A. I did.

23 Q. Okay, and tell me what evidence you  
24 reviewed and how you were either able to eliminate it  
25 or how you were not able to eliminate it.

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1           A. I was not a label -- I -- I was not able  
2 to eliminate it, because it was not there at the time  
3 of my examination. And it is only photographed. And  
4 it is not in such an orientation to -- to examine the  
5 fire patterns on the shelf itself.

6           Q. So on the metal shelf, you were not able  
7 to do any -- do a forensic examination of the  
8 photographs to determine whether or not the origin of  
9 the fire was on the metal shelf. Is that correct?

10          A. I was not able to determine that at all,  
11 because there wasn't enough data to do so.

12          Q. Okay. So in your opinion, did the fire  
13 either start at floor level, on the metal shelf, or  
14 at the wireless device?

15          A. Could have, yes, ma'am.

16          Q. Okay. Is there anywhere else that you're  
17 saying it could have?

18          A. No.

19          Q. Okay, so it's these three specific origins  
20 that you're saying are potential.

21          A. When you say specific are you ---

22          Q. --- That -- the three I'm looking at are  
23 ground level, the -- or floor level, the bread shelf,  
24 or the wireless device.

25          A. I haven't said that the bread shelf was an

Page 136

1 origin area.

2 Q. Okay, so -- but you're saying it could --  
3 it could have been.

4 A. No.

5 Q. Okay, so you're saying there's no way that  
6 the fire started on that bread shelf.

7 A. I'm saying that ---

8 Q. --- Or on the metal shelf. Excuse me.  
9 The metal shelf. Strike the question.

10 There are three potential origins for this  
11 fire, in your opinion.

12 A. Well, okay. Well, let me just understand  
13 your question, because we're talking about points of  
14 origin ---

15 Q. --- Uh-huh.

16 A. --- Or areas of origin?

17 Q. No. I'm talking about the point of  
18 origin. I want to know specifically ---

19 A. --- Well, a point of origin would -- when  
20 -- when I define a point of origin ---

21 Q. --- Okay.

22 A. --- We're talking about a -- a point.

23 Q. Okay.

24 A. An item. Okay?

25 Q. Uh-huh.

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1           A. And a floor level, if it's -- if -- if you  
2 have a puddle ---

3           Q. --- Uh-huh.

4           A. --- Or a large area of origin, it is an  
5 area of origin ---

6           Q. --- Okay.

7           A. --- Whether it's -- and -- and what we're  
8 talking about when you talk about a point of origin  
9 is where the first fuels ignited in that position.

10          Q. And that you cannot determine.

11          A. I cannot determine.

12          Q. Okay. So then let's broaden it up for --  
13 and can you even give a hypothetical about the point  
14 of origin?

15          A. Not about a point, no.

16          Q. Okay.

17          A. I don't have enough data to do so.

18          Q. Okay, so can you give a hypothetical about  
19 the area of origin?

20          A. And -- and what I had said earlier was is  
21 that the area of origin in my report could be from  
22 floor to ceiling, anywhere between that area  
23 involving that shelf or surrounding components.

24          Q. Okay, and that's what I'm trying to narrow  
25 down so I am very precise about where you think the

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1 potential or possibility of the area of origin. So  
2 you've mentioned the wireless device.

3 A. Uh-huh.

4 Q. So that's one.

5 A. Uh-huh.

6 Q. You mentioned at floor level.

7 A. And now, let's clarify.

8 Q. Okay.

9 A. You asked me what evidence there was ---

10 Q. --- Right.

11 A. --- To say that it was at floor level. I  
12 have never said that it started at floor level or ---

13 Q. --- I understand that.

14 A. Okay. What I have said is it could start  
15 anywhere in that shelf area and create the patterns  
16 that are developed on the floor. I can only tell you  
17 that that's my area. I do not have a point other  
18 than that.

19 Q. Okay. I want you to tell me all the  
20 evidence based on your investigation that supports  
21 that it was the wireless device that had an  
22 electrical failure and caught on fire.

23 A. There is no direct physical evidence that  
24 the -- the Ion IQ actually failed and caused that  
25 fire.

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1           Q.     Okay. Tell me about the fire pattern that  
2 supports your testimony that the wireless device  
3 could have caused this fire.

4           A.     It is in the area of origin.

5           Q.     Okay, and ---

6           A.     --- I -- I'm going to elaborate. It's in  
7 the area of origin and there is an easily-ignitable  
8 fuel in close proximity. And because the fuel  
9 package orientation and the shelf itself would allow  
10 burning material to reach the bottom level, the  
11 floor, I can't tell you whether or not it started at  
12 the Ion IQ level or anywhere between that and the  
13 floor.

14          Q.     Is there anything about this pattern, the  
15 burn pattern that supports your theory that the  
16 wireless device is what caught on fire?

17          A.     No.

18          Q.     Other than the area of origin, the fact  
19 that there was this wireless device in the area where  
20 the fire started, and that there was an  
21 easily-ignitable fuel source in close proximity.

22          A.     Uh-huh.

23          Q.     Other than those two facts, do you have  
24 any other evidence that supports your theory that the  
25 wireless device was the ignition source to this fire?

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1           A. I don't have any other evidence at all.  
2 We -- and as I mentioned earlier, we don't have it.  
3 I haven't been able to look at it nor has Steve  
4 Stone. So developing a theory as to how it failed or  
5 whether or not it failed for sure we can't do.

6           Q. Right. But I'm talking about everything  
7 else that you would do ---

8           A. --- Uh-huh.

9           Q. --- As a cause-and-origin expert,  
10 everything else would -- that you would look at. So  
11 you said you looked at the -- you would look at fire  
12 patterns.

13          A. Uh-huh.

14          Q. Or burn patterns. What else would you  
15 look at?

16          A. I would look at the -- the -- clearly, you  
17 -- this is the protected area where this item was.  
18 Okay?

19          Q. Right.

20          A. And you keep put -- pointing to that. So  
21 where you're headed with that is is this protected  
22 area. That's what you want to know about. Right?

23          Q. Well, actually I'll get to that question.

24          A. Okay.

25          Q. But right now I'm trying to figure out the

Page 141

1 evidence that supp ---

2 A. --- Well, that's one of the things that I  
3 would ---

4 Q. --- That supports this theory.

5 A. Well, that's one of the things that I  
6 would look at, is to determine whether or not another  
7 item was there. And that was there.

8 Q. You said another item that ---

9 A. --- Yeah. Any other electrical source of  
10 ignition being present in that or any other potential  
11 source of ignition, that's what I would look for.  
12 And that was physical evidence that there was  
13 something there.

14 Q. Right.

15 A. That was ---

16 Q. --- That the wireless device was on the  
17 wall.

18 A. Yes. That would be what I would consider.

19 Q. Okay, so you would look at that. Is there  
20 evidence that there was an item on the wall?

21 A. Yes.

22 Q. Okay.

23 A. If I had been there originally in the  
24 beginning, I would have considered that and its  
25 location and I would have sifted through the debris

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1 to find anything else that was a potential source of  
2 ignition. I would have considered that with the fuel  
3 package that was present and the fire patterns.

4 Q. Do you know whether or not there was any  
5 type of metal base plate on the wall?

6 A. I don't.

7 Q. Is there any evidence that there was a  
8 base plate on the wall?

9 A. Not that I'm aware of. I don't know.

10 Q. Okay. Anything else besides fire patterns  
11 and evidence of an item on the wall?

12 A. No.

13 Q. Nothing else you would look at as a  
14 cause-and-origin expert.

15 A. I would look for the associated  
16 peripherals for that to find out if they were  
17 present, in other words, a power cord for it and its  
18 power supply if it had one.

19 Q. Okay.

20 A. To make sure that all of that was  
21 available for inspection.

22 Q. By an electrical engineer.

23 A. Yes.

24 Q. What was this power supply to this  
25 wireless device?

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1           A. I don't know. I haven't seen it.

2           Q. Okay

3           A. All I know is is what the specs ---

4           Q. --- Were you told?

5           A. Yeah. The specs in the reports provided  
6 by Mr. Martini and the -- the specs of the item  
7 provide that it's the class-two, 24-volt power  
8 supply.

9           Q. And did you find that during your research  
10 on this wireless device?

11          A. Yes.

12          Q. Okay, so do you have any reason to refute  
13 that evidence that it was -- of what Mr. Martini  
14 found?

15          A. That that's what it requires, no.

16          Q. Okay, so you're both saying the same  
17 thing.

18          A. I'm saying that that's what it requires,  
19 yes.

20          Q. Okay, and did you ask Mr. Diamantopoulos  
21 about it -- the power supply?

22          A. No. He -- I asked him if he had that  
23 thing there and he said yes.

24          Q. And did you ask Mr. Dowlat, the person who  
25 installed it?

1           A. He said that the power supply was above  
2 the ceiling level.

3           Q. And did he tell you what type of power  
4 supply it was?

5           A. That it was a 24-volt power supply.

6           Q. Okay, so the evidence is consistent in  
7 this case.

8           A. The statements are all consistent about  
9 what it had, yes, ma'am, absolutely.

10          Q. Anything else you would have considered?

11          A. As far as?

12          Q. To determine that it was the -- that the  
13 fire started at this wireless device up on the wall.

14          A. I would have inspected it. I would have  
15 had it inspected. That's all ---

16          Q. --- Okay.

17          A. --- That I can say.

18          Q. Okay.

19          A. I mean, it -- because -- because it is in  
20 the origin area it would absolutely have to be  
21 inspected.

22          Q. Okay. But as I understand, an electrical  
23 engineer would have -- or a mechanical engineer would  
24 have inspected it. But I'm talking about with you as  
25 the cause-and-origin expert who looks at fire

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1       patterns, and you said evidence on the wall.

2                   Anything else that you would do?

3       A.     No.

4       Q.     Okay. So let's start with the fire  
5       patterns. Can you tell me what about the fire  
6       pattern, based on looking at the photographs ---

7       A.     --- Uh-huh.

8       Q.     --- And your visit to the scene, supports  
9       your theory that it was the wireless device that was  
10      the origin of the fire?

11                  MR. WIGGINS: I object, because he  
12      hadn't said that.

13       Q.     (Ms. Daly) Or that it could have been.

14                  MR. WIGGINS: There you go.

15       Q.     (Ms. Daly) Could have been the origin.

16       A.     It could have been the origin, because  
17      there's not enough data to support that the fire  
18      originated anywhere else on that rack. There's not  
19      enough data to support that it's below that or above  
20      -- or it -- or at that level on that shelf. I do not  
21      have enough data to support any of those. So it  
22      would have to have been included as a potential.

23       Q.     So am I accurate in saying you do not have  
24      any evidence based on the fire pattern that the  
25      ignition source was the wireless device?

1           A.     No, no.

2           Q.     Is that correct?

3           A.     That is correct.

4           Q.     Okay. Because I think I did a double  
5 negative, I'm going to make sure that I have this  
6 clear.

7                   Isn't it true that there's nothing about  
8 the fire pattern that supports the theory that the  
9 wireless device was the ignition source of the fire?

10          A.     The fire pattern itself only says that it  
11 was present and that it was within a column or an  
12 area that I believe could be the origin. There is no  
13 evidence on the wall that supports that it failed.

14          Q.     And there's -- there is no evidence based  
15 on the fire pattern that it failed. Is that correct?

16          A.     I see no evidence on there that says that  
17 it failed.

18          Q.     You state in the last sentence of your  
19 report under summary of cause and origin that without  
20 the examination and elimination of this potential  
21 source of ignition, referring to the wireless device,  
22 and the absence of evidence supporting ignition  
23 sequence, no forensically-based cause determination  
24 can be made and the cause classification is  
25 undetermined.

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1                   If the wireless device is ruled out as a  
2 potential source of ignition, if the jury finds that  
3 Mr. Martini's inspection and elimination of the  
4 wireless device was competent, then what would your  
5 classification of the fire be?

6                   A.    That it was most probably incendiary.

7                   Q.    On the second page of your report you talk  
8 about your examination and you mention that you had a  
9 meeting with several people. One is Mr.  
10 Diamantopoulos. Did you take notes from your meeting  
11 with him?

12                  A.    Uh-huh, yes.

13                  Q.    And are those notes included in Exhibit 3?

14                  A.    On the top page and the second page.

15                  Q.    You mention a Mr. Lewis Hardin. Who's Mr.  
16 Hardin?

17                  A.    He was the contractor that was hired to do  
18 the remodel.

19                  Q.    After the vandalism ---

20                  A.    --- Yes, ma'am.

21                  Q.    --- Or for after the fire?

22                  A.    It was my understanding after the  
23 vandalism.

24                  Q.    Okay. Did you have a -- did you interview  
25 Mr. Hardin?

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1           A. No. He was just there. And I documented  
2 who was there.

3           Q. Okay. Did you have a conversation with  
4 him?

5           A. Huh-uh.

6           Q. Okay. Is he significant to your  
7 investigation at all?

8           A. No, ma'am.

9           Q. Okay. Mr. Bob Dowlat ---

10          A. --- Uh-huh.

11          Q. --- Of Creative Computers.

12          A. Uh-huh.

13          Q. Did you have a discussion with Mr. Bob  
14 Dowlat?

15          A. Yeah. The -- at the scene that day we  
16 discussed the DVR system and he was indicating where  
17 the DVR was and that he had talked to Mr.  
18 Diamantopoulos about the DVR and -- and they -- they  
19 had indicated that they had talked -- or that Mr.  
20 Diamantopoulos had contacted him on the day that  
21 Terry was out there doing his scene exam. And that's  
22 the limit. That was what it was all about.

23          Q. Okay. Did you make notes of your  
24 discussion with Mr. Bob Dowlat?

25          A. No. It was in -- that was just a very,

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1 very short comment about that. And it was -- it was  
2 immaterial at the time to the ---

3 Q. --- Okay. On page three you have some  
4 handwritten notes that mention Bob Dowlat and his  
5 telephone number. Did you ever follow up with him?

6 A. No, I did not.

7 Q. And then you have some stuff underneath  
8 that, install memory ---

9 A. --- Just ---

10 Q. --- Menu board, etcetera.

11 A. Uh-huh.

12 Q. Is that taken at the time that you ---

13 A. --- Yeah, I think that was ---

14 Q. --- Were present with Bob Dowlat?

15 A. That was with Mr. Diamantopoulos.

16 Q. Okay.

17 A. He identified Bob Dowlat and was telling  
18 me what he had done.

19 Q. Okay. I would like for you to walk me  
20 through your initial interview -- actually your only  
21 interview with Mr. Diamantopoulos and walk me through  
22 your notes, only because I'll never be able to read  
23 these later.

24 A. Okay. On January 24th, at 8:42 in the  
25 morning, I spoke with Mr. Diamantopoulos.

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1 Q. Okay, and can I stop you there?

2 A. No, that's not correct. I apologize.

3 That was 11-9. He was telling on January 24th at  
4 8:42 in the morning. Let's see. That's when he was  
5 -- the fire was. He opened the -- opened the day  
6 before. They closed at three a.m. Assistant manager  
7 Tori Moon was -- was there. She -- she closed.

8 Q. Before you go, it says 8:42 Tuesday  
9 morning.

10 A. Uh-huh.

11 Q. So is that what time ---

12 A. --- That's when the ---

13 Q. --- He's telling you the fire ---

14 A. --- No. That's when the fire occurred,  
15 yeah.

16 Q. That's what he's telling you?

17 A. Uh-huh.

18 Q. And then what is the next word?

19 A. Umm, it says vehicle. But I don't know  
20 what that means. It says open the day before. I  
21 don't re -- recall what that is.

22 Q. Okay.

23 A. I think we star -- very likely we started  
24 on -- on something else and -- and headed down  
25 another direction.

1           Q.    Okay. Please continue.

2           A.    It says they were open the day before and  
3       closed at three a.m. Assistant manager Tori Moon  
4       closed. She has been working for him for seven to  
5       eight years. He said he couldn't remember what  
6       employees were there at that time to -- it says they  
7       turn off the equipment, the cooking equipment.  
8       Nothing done in the breaker panel to shut it off.  
9       The exhaust is off. Tori's job is to turn off the  
10      exhaust, which was the -- the cooking exhaust.

11                  He said there was no problems with the  
12       electrical system. The breakers weren't tripping.  
13       No one was allowed to smoke on the property. They  
14       used to be required to smoke outside the back door  
15       but then they moved off the lot because of trash.

16                  Q.    What did he tell you about why he had no  
17      dumpsters?

18                  A.    Umm, I don't -- well, I recall reading  
19       about it. And it's not in -- it's not there in the  
20       notes. You kind of caught me off guard. I was  
21       headed down -- let's see here.

22                  Q.    Did you find it odd or interesting that a  
23       restaurant wouldn't have dumpsters in the back?

24                  A.    I thought it was interesting that that one  
25       didn't have dumpsters in the back. I would be

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1      surprised if Fayetteville would allow them to do  
2      that. I -- I was -- I was told that an employee was  
3      picking up the trash. But, yes, I found it odd that  
4      there weren't any dumpsters there.

5            Q. Did you ever ---

6            A. --- The -- the -- see, the -- the day that  
7      I went out there originally, it was a year  
8      afterwards. So at first I didn't think about the  
9      dumpsters. It was only after reading the EUO's that  
10     it was of interest.

11           Q. And did you learn why the dumpsters had  
12     been ---

13           A. --- I ---

14           Q. --- Removed from the property?

15           A. I don't know exactly why. There was some  
16     speculation it was because of -- of -- of payment.  
17     But -- but I don't know.

18           Q. You can continue.

19           A. Okay. They ---

20           Q. --- Was there anything else about that  
21     paragraph that was significant to you?

22           A. Which paragraph?

23           Q. The one you just finished reading.

24           A. Umm, they moved off the lot because of  
25     trash. That was because of the cigarettes at the

1 back door or the trash at the back door.

2 Q. Okay.

3 A. Okay. He said they did not clean their  
4 own linen. That was shipped out to clean. PWC had  
5 the power. Time Warner had the cable, phones, and  
6 Internet. Piedmont Natural Gas did the -- had the  
7 gas. And no work had been done recently on the  
8 building.

9 He said there -- he was not aware of any  
10 storms in the area. He said during construction a --  
11 a power pole caught fire. The fire department had to  
12 call PWC to shut it off before -- and they ended up  
13 shutting off the power to the block. He changed the  
14 computer system also. The AC was damaged after this.  
15 And a bunch of light bulbs were replaced apparently.

16 I asked him about problems with the  
17 employees. He said he had a problem with one  
18 employee that was fired but then he rehired the  
19 individual. He said he had five stores at the time  
20 of the fire. He said that no one stands out from the  
21 other stores as being fired. No issues with the  
22 family. There weren't any other general con --  
23 contractors involved.

24 He said the business was -- business was  
25 all secured at the time of the fire and the alarm was

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1 set and it never went off. He said Crossroads  
2 Security did not log the set -- the setting of the  
3 alarm or deactivation. But clearly we know that --  
4 that it -- it -- when it -- it -- it goes off that it  
5 -- it's recorded.

6 Q. And you've seen those recordings?

7 A. Yes -- well, not the recordings. I've  
8 seen the paperwork.

9 Q. Okay.

10 A. But not on the phone recordings.

11 Q. Okay.

12 A. It says on the date of the loss he took  
13 his son to school, to Terry Sanford, dropped him off  
14 at approximately eight o'clock, drove straight to the  
15 restaurant, opened D side doors, which would be the  
16 -- the side closest to the -- the motorcycle shop,  
17 went in to deactivate the alarm. The number one was  
18 hard to push, may not have hit it hard enough, and  
19 the alarm activated. The alarm company called. He  
20 gave them their code and deactivated the alarm and  
21 went about business, went to the table full of bread,  
22 got in the office and ---

23 Q. --- What did he say about going to the  
24 table full of bread?

25 A. You know, I don't -- I -- it says that,

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1       but I don't recall exactly what he -- what he meant  
2       on that. I don't know if he was telling me that he  
3       moved something or not.

4                 But I -- at -- at the time, in the  
5       beginning I was not aware of any of the information  
6       about the -- the bread being moved, having been  
7       moved. That would have been something I would have  
8       followed up on later after finding that out.

9       Q.       It -- but you didn't follow up ---

10      A.       --- No, I did not.

11      Q.       --- On that. Right?

12      A.       No, I did not.

13      Q.       Okay.

14      A.       He said he got ---

15      Q.       --- Did you ever talk to Mr. Wiggins or  
16       anybody else about it?

17      A.       I did, yes.

18      Q.       And what did you say to him?

19      A.       And he said that they were unaware that it  
20       -- that it -- how -- how it had been moved, that it  
21       was just there.

22      Q.       Okay. And you don't have any other  
23       recollection of what you meant by went to table full  
24       of bread.

25      A.       I don't recall. I'm sorry.

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1 Q. You can continue.

2 A. And then at the next page it says that he  
3 left about 8:25 and the fire was discovered at 8:42.  
4 It says through -- the fire was discovered through  
5 the drive-thru window -- the window of the  
6 drive-thru.

7 And then I had him show me where  
8 everything was located in that corner. He describes  
9 the bread rack, the bread table, the drive-thru  
10 wireless headset, and the rack with plates, glasses,  
11 and maybe some employee clothing.

12 Q. Did he tell you where he went after he  
13 left the building?

14 A. If I recall, he said that he went to -- he  
15 was going to go to the -- the bank. But he also  
16 talked about going to JK's -- or to Pizza Palace.  
17 Excuse me.

18 Q. He told you that?

19 A. It's not in my notes. I believe we  
20 discussed it that day, that he had left at -- but I  
21 -- I really thought that he said he went to the bank  
22 first and that that was it. But I don't have that in  
23 my notes.

24 Q. And then went to JK's -- or Pizza Palace  
25 ---

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1 A. --- Or Pizza Palace. Yes, ma'am.

2 Q. I'm sorry. Pizza Palace.

3 Okay, so you've read the EUO since then.

4 A. Uh-huh.

5 Q. What was different about his statement to  
6 you and his testimony under oath at the EUO?

7 A. Well, there was some discussion in one of  
8 the EUO's about his son being sick that day.

9 Q. Uh-huh.

10 A. And that was different than what he had  
11 told me, because he said he took his son to school.  
12 He also -- there was some discussion as it -- to  
13 whether or not he had gone over to Sam's or not prior  
14 to.

15 Q. And in the discussion with you during your  
16 initial interview of Mr. Diamantopoulos, did he tell  
17 you that he went to Sam's?

18 A. No.

19 Q. Okay, so when was the first time you  
20 learned that he was saying that he went to Sam's?

21 A. In the EUO.

22 Q. In the EUO. Okay, and then in your -- in  
23 his statement to you he said he went to the bank  
24 first, then to meet his friend for coffee, which is  
25 different from what he said ---

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1           A. --- Well, he was on the way to go but he  
2 didn't make it to the bank.

3           Q. Okay. He didn't make it to the bank  
4 because of why?

5           A. Because he got a call about the fire.

6           Q. Okay. That he was on the way to the bank  
7 is what he told you.

8           A. Uh-huh.

9           Q. And what is different about what he said  
10 to you during the initial interview and what he said  
11 under oath at the EUO?

12          A. My recollection is that he left and went  
13 to get gas, didn't have his debit card with him. He  
14 left there and he went making calls to find out  
15 whether or not he was going to Pizza Palace or JK's  
16 to go and have coffee with his friend.

17          Q. Did he ever mention to you during your  
18 initial interview that he went to Pizza Palace?

19          A. No.

20          Q. No. Did he ever mention to you that he  
21 was -- went to JK's during his initial interview with  
22 you?

23          A. I don't recall if he did or not.

24          Q. Okay. The only thing you do recall about  
25 that initial meeting was the bank. Is that correct?

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1           A.     Yes, ma'am.

2           Q.     Okay. Did you ever tell anyone that the  
3 statement given to you by Mr. Diamantopoulos was  
4 different than the statement he said under oath?

5           A.     We -- yeah, I talked about that with Mr.  
6 Wiggins.

7           Q.     And what did you tell him?

8           A.     I said that there were some discrepancies  
9 in his statements in the EUO's and in my conversation  
10 with him.

11          Q.     What else did you tell him?

12          A.     I don't think I told him anything else  
13 other than there were discrepancies.

14          Q.     And what was his comments back to you?

15          A.     I don't recall exactly what he said back  
16 to me.

17          Q.     Roughly, what did he say?

18          A.     I don't remember. I -- I don't remember  
19 what he said back.

20          Q.     Okay. Has he ever discussed with you any  
21 other different stories given by Mr. Diamantopoulos

22          ---

23          A.     --- No, ma'am.

24          Q.     --- About his whereabouts that morning?

25          A.     No. I did discuss with him that he was at

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1 Walmart and that had not been, you know, mentioned in  
2 his statements.

3 Q. Have you ever been told that his story  
4 that he gave under -- in the EUO was different than  
5 even his testimony he gave in the deposition?

6 A. I haven't read the deposition. No, I  
7 haven't been told that.

8 Q. That's what I want to understand.

9 A. Yeah.

10 Q. Has anyone told you? Has anyone talked to  
11 you about it?

12 A. No, ma'am.

13 Q. Okay. And it's your testimony that you do  
14 not remember anything that Mr. Wiggins said to you  
15 about the discrepancies when you told him.

16 A. I would -- I -- I would be wrong if I told  
17 you, because I just can't remember.

18 Q. Okay, that's fair.

19 Let's talk about you -- all your  
20 conversations with Mr. Dowlat and what he told you.

21 A. I -- I've already said the only time that  
22 -- that he was present was that -- that day and all  
23 he did was tell me that he installed the camera  
24 system and the micro -- the -- the menu boards and  
25 the computer system for that.

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1 Q. Okay. Anything else?

2 A. No.

3 Q. Well, you said earlier that he mentioned a  
4 conversation ---

5 A. --- Oh, yes. I apologize. He mentioned  
6 -- he was there the first day and he mentioned a  
7 telephone conversation between he and Mr.  
8 Diamantopoulos. He said that Mr. Diamantopoulos had  
9 spoken to him over the phone while Mr. Lacy was  
10 there. At least Mr. Diamantopoulos had indicated  
11 that Mr. Lacy was there. All he recalls is is that  
12 Mr. Diamantopoulos called him to discuss the camera  
13 system.

14 Q. And what did Mr. Diamantopoulos want to  
15 know from Mr. Dowlat?

16 A. How to recover data from it. That's my  
17 understanding. And that's all that I know.

18 Q. Anything else?

19 A. No.

20 Q. Did he, Mr. Dowlat, speak with Mr. Lacy?

21 A. I don't know. All I know is is that --  
22 that I was told that he heard Mr. Diamantopoulos  
23 speaking to Mr. Lacy. But I -- I don't know that  
24 that's accurate or not.

25 Q. But anything else about the conversation

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1       with Mr. Dowlat that's important?

2           A.     No, ma'am.

3           Q.     You mentioned the surveillance system. I  
4       want to know everything you have heard or discussed  
5       with anyone regarding the surveillance system.

6           A.     I was initially under the impression or  
7       told that Mr. Lacy had recovered the DVR for the  
8       surveillance system.

9           Q.     Did -- were you told that he recovered the  
10      DVR or recovered the hard drives?

11          A.     The re -- the hard drives. I was told  
12      that two hard drives were recovered.

13          Q.     Okay, and who told you that Mr. Lacy had  
14      recovered two hard drives?

15          A.     Mr. Diamantopoulos.

16          Q.     Did Mr. Diamantopoulos tell you anything  
17      else about the recovery of those two hard drives?

18          A.     That they -- that he -- they were later  
19      did -- that they did not include the surveillance  
20      system hard drive.

21          Q.     Okay. Anything else?

22          A.     No.

23          Q.     Did Mr. Diamantopoulos tell you that there  
24      were detectives from the Fayetteville Police  
25      Department present at the scene who initially took

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1 the two hard drives?

2 A. Yes.

3 Q. Okay, so tell me everything about that  
4 topic of conversation.

5 A. I asked him if they had provided him with  
6 a receipt and what they had given him and he said  
7 that he had signed a receipt for the two hard drives  
8 but he did not recall anything that included the DVR.

9 Q. And so Mr. Diamantopoulos told you that he  
10 signed the receipt for the two hard drives.

11 A. Uh-huh.

12 Q. Correct?

13 A. Yes.

14 Q. And that the detectives took the two hard  
15 drives.

16 A. Uh-huh.

17 Q. Correct?

18 A. Yes.

19 Q. And then did he tell you that Mr. Lacy got  
20 the two hard drives from the Fayetteville Police  
21 Department?

22 A. Yes.

23 Q. Did he tell you anything else about the  
24 hard drives?

25 A. That they did not include what was on the

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1       DVR, that they were for the POS system.

2           Q.    Okay. Did he explain to you that those  
3       hard drives were reviewed by a company to determine  
4       what was on those hard drives?

5           A.    That was my understanding, is that he knew  
6       that at that time they had been reviewed and all that  
7       was on them was the point-of-sale data.

8           Q.    Okay, and what did he tell you about that?

9           A.    I didn't go into depth with him about that  
10       other than to know that the data from those two hard  
11       drives had been transferred to something else.

12          Q.    Did you ask to review those hard drives?

13          A.    No.

14          Q.    Did you ask to review the data from the  
15       hard drives?

16          A.    No. I don't know that I could have  
17       understood it. I don't know anything about it.

18       So....

19          Q.    Did you go with Mr. Diamantopoulos to the  
20       police department to ask about the hard drives?

21          A.    No.

22          Q.    Do you know whether Mr. Diamantopoulos  
23       went to the police department to ask about the hard  
24       drives?

25          A.    I don't know.

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1           Q.     Is there anything else you know about the  
2 hard drives that I haven't asked you about?

3           A.     Not that I'm aware of.

4           Q.     Going further down your report, you state  
5 that Mr. Diamantopoulos left the building and drove  
6 to Sam's Club on 401 bypass, and after pulling into  
7 the parking lot he decided not to get gas and then  
8 drove to Pizza Palace to meet a friend for coffee.

9 Where did you get that information?

10          A.     From the EUO's.

11          Q.     Now we're getting to the topic you  
12 mentioned earlier when we were looking at Exhibit 4.  
13 There's a red circle around the protected area where  
14 the wireless device was located on the wall. Explain  
15 to me your theory regarding how there was a protected  
16 area on the wall if the wireless device was the  
17 source of ignition for this fire.

18          A.     Why there's a protected area there?

19          Q.     Uh-huh.

20          A.     I don't know how it came apart. I don't  
21 know whether or not the -- the PCB stayed on the wall  
22 attached to the back half of this assembly or not.

23          Q.     So are you saying the PCB could have  
24 created a protective area?

25          A.     That and its back cover on the back side.

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1       There's a -- it's just clam shell. It has one side  
2       and then a front side ---

3           Q.    --- Uh-huh.

4           A.    --- And then a PCB in the middle. I don't  
5       know how it came apart. I mean, and -- and there's a  
6       potential that something could have been left on the  
7       wall for -- in longer duration than the fire.

8           Q.    Okay, and when you say something else  
9       could have been left on the wall, what are you  
10      referring to? What ---

11          A.    --- The back -- the back of ---

12          Q.    --- Okay.

13          A.    --- The assembly itself.

14          Q.    What would the back of the wireless device  
15       -- what would it have to have been made out of in  
16       order to create a protected area?

17          A.    I think the unit itself. I mean, if the  
18       fire started elsewhere and created that pattern, it's  
19       still the same -- same product. Whether there -- I  
20       don't know that there was a plate behind it. I -- I  
21       don't know if that's correct or not. All I know is  
22       is that it's that product. If the fire attacked it  
23       from the front side, it could leave a pattern. If  
24       the fire originated there and it came apart, leaving  
25       a portion of it on the wall, it could create that

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1 pattern.

2                   The shelves were right beside it. I don't  
3 know how the shelves interacted with it once it --  
4 once it was damaged by the fire. That's why it would  
5 need to be examined further.

6                   Q. Okay. I guess -- and maybe you've  
7 answered it and I'm not clear on your answer.

8                   What I want to know is every possible  
9 scenario that -- or theory that you have that  
10 supports your theory that there is a protected area  
11 on the wall and that was where the fire started.

12                  A. Again, I didn't say that is where the fire  
13 stated.

14                  Q. Right. I'm saying but if -- if -- let's  
15 go with that theory. So your theory is the wireless  
16 device caught on fire.

17                  A. Okay.

18                  Q. So explain to me every scenario that you  
19 believe could support -- or theory that you believe  
20 could support the hypothetical that this wireless  
21 device was the ignition source, it was what caught on  
22 fire, and it created this protected area on the wall.

23                  A. Well, I will try and rephrase it from what  
24 I've already said. What I said was is that its  
25 appliance, the appliance itself ---

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1 Q. --- Uh-huh.

2 A. --- Is on the wall. If it's attacked from  
3 the outside, from somewhere else, it could create a  
4 protected pattern.

5 Q. Yeah, I get that.

6 A. If it's on the wall and it comes apart on  
7 the wall, in other words, the front falls off, and  
8 the front is ignited, and it leaves remaining  
9 material on the wall that stays there throughout the  
10 longer time frame, you could get a protected area.

11 Q. Okay. So that I am clear with this  
12 theory, so are you saying that in order for there to  
13 be a protected area on the wall, that the wireless  
14 device would have had to have fallen off the wall and  
15 then caught on fire?

16 A. No.

17 Q. Okay, so your testimony is that the  
18 wireless device could have caught on fire, created  
19 this protected area on the wall, and then caught the  
20 fuel source, the styrofoam and paper plates on fire.

21 A. What I'm saying is that we don't know  
22 where the fire could have started inside the unit,  
23 whether it's on the front side of the board or the  
24 back side of the board. If it started on the front  
25 side of the board and progressed to the front cover,

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1       the front cover or portions of the front cover could  
2       fall. It could leave por -- a portion of the  
3       appliance on the wall, which could create a protected  
4       area.

5           Q.     And have you ran that theory by Mr. Stone?

6           A.     I have.

7           Q.     And what did Mr. Stone tell you about the  
8       likelihood of that happening?

9           A.     He said it's a possibility.

10          Q.     Okay, it's a possibility.

11          A.     Uh-huh.

12          Q.     It's possible. Did he tell you the  
13       likelihood?

14          A.     I don't think we discussed the likelihood  
15       one way or another.

16                   MR. WIGGINS: When you get to a  
17       breaking spot, we've got lunch here.

18                   MS. DALY: Sure. Off the record.

19                   (1:34-1:56 p.m. - Luncheon recess)

20          Q.     Is it more likely than not that a  
21       protected area on a wall would be created at the  
22       ignition source of a fire?

23          A.     It's -- it's more likely it that would  
24       not.

25          Q.     That it would not create a protected area?

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1           A. That's right. Yes.

2           Q. Are you able to give a percentage of the  
3 likelihood, like a 70 percent chance that it would  
4 create a protected area or -- excuse me. That it  
5 would not create a protected area or are you just  
6 able to say it's more likely than not that it would  
7 not create a protected area?

8           A. I can't say. I -- I don't feel like I can  
9 give you a percentage.

10          Q. Okay. I believe you've already asked --  
11 answered this question, but I would -- just want to  
12 make sure that I've covered it.

13          Is it your opinion that the IQ wireless  
14 device suffered some type of heat producing event and  
15 catastrophic failure?

16          A. It's not my opinion that it did.

17          Q. Okay. And did you ever ask why you were  
18 retained -- strike that.

19          Were you -- did you ever ask why you were  
20 not retained earlier than November of 2012?

21          A. No, ma'am.

22          Q. Do you know whether there was another  
23 expert who looked at the scene or the evidence prior  
24 to you?

25          A. I don't know.

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1           Q. I'd like to walk through Mr. Lacy's  
2 report. Let's start with his opinions.

3                 I'm going to ask you to read the first  
4 opinion in Mr. Lacy's expert report and tell me  
5 whether or not you disagree with it. And if you just  
6 do disagree, I'd like to know the evidence that you  
7 base your disagreement upon.

8                 (Witness examined document)

9           A. Are you just talking about number one  
10 right now?

11          Q. Correct.

12          A. No.

13          Q. You do not disagree?

14          A. No.

15          Q. I'd like you to read opinion number two  
16 and tell me whether or not you agree with that  
17 statement.

18          A. (Witness examined document) The only  
19 thing -- the only thing in that opinion that I would  
20 question, the last sentence says Mrs. Moon stated the  
21 cameras had not been working from her arrival at the  
22 restaurant on January 23rd, 2012, through her  
23 departure on January 24th, 2012.

24                 If I can recall correctly it was only the  
25 monitor that she was aware wasn't working, not the

1       camera system.

2           Q.     Did you interview Ms. Moon?

3           A.     I did not, but that was from the EUO.

4           Q.     Okay. And have you read her deposition  
5       that was taken after the EUO?

6           A.     No. I mentioned that already.

7           Q.     Oh, sorry. So the -- so the only basis  
8       that you are relying on to question that statement is  
9       Ms. -- your recollection of Ms. Moon's examination  
10      under -- under oath?

11          A.     Yes, ma'am.

12          Q.     Did you ever talk to anyone about whether  
13      or not the surveillance system was working that day?

14          A.     No, ma'am.

15          Q.     Did you find it odd or interesting that  
16      suddenly the monitors were not working on the day of  
17      the fire?

18          A.     I thought that it was odd.

19          Q.     Did you talk to anybody about it being  
20      odd?

21          A.     I mentioned it to Mr. Wiggins.

22          Q.     And what was that discussion?

23          A.     That discussion was we don't have the  
24      recording. I don't know whether they were working or  
25      not.

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1           Q.     Okay. While we're on the topic of the  
2 surveillance system, we were both present at the  
3 inspection ---

4           A.     --- Yes ---

5           Q.     --- Of the evidence. There was a power  
6 supply that was recovered from the scene. Correct?

7           A.     Yes, ma'am.

8           Q.     And that power supply was examined at the  
9 office of John Cavarock. Correct?

10          A.     Yes, ma'am.

11          Q.     And during that examination it was  
12 determined that the power supply that was examined at  
13 the examination was unplugged at the time of the  
14 fire. Correct?

15          A.     Yes, ma'am.

16          Q.     Do you have any evidence to refute that it  
17 was unplugged?

18          A.     Oh, no.

19          Q.     Okay. So what have you discussed about  
20 the unplugged power supply? With whom have you  
21 discussed it with and any discussions that followed.

22          A.     Immediately following the evidence exam I  
23 contacted Trey McClean and Mr. Wiggins. Told them  
24 that we had found a power supply that indicated that  
25 it may have been for a -- a video camera system.

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1                   He indicated that it was unplugged and  
2 appeared to be have been turned -- it was also turned  
3 off. And I said we needed to find out what that was  
4 all about.

5                   And I got a return call stating that they  
6 had spoken with Mr. Dowlat, and that that was not a  
7 power supply for the system that he had provided.  
8 But what -- but was more than likely an old component  
9 left in the building. That the camera system that he  
10 had installed has it -- had its own power supply.

11                  Q. Did Mr. Dowlat inspect the actual power  
12 supply?

13                  A. No.

14                  Q. What was his basis in saying that that was  
15 to the old surveillance system?

16                  A. The photographs.

17                  Q. And what about the power supply that was  
18 examined, was the determining factor that it was not  
19 for the new surveillance system, it was for the old  
20 surveillance system?

21                  A. That the new surveillance system had its  
22 own power supply. It was all self-contained.

23                  Q. Anything else?

24                  A. No, ma'am.

25                  Q. Anything else -- any other discussions

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1 regarding this power supply?

2 A. No. I -- I found a -- I used the model  
3 number on it and found a photograph of one. And it  
4 was made by COP USA. And I sent them a -- a -- a  
5 screen shot or a -- a photograph of it from the  
6 Internet that's all.

7 Q. And what did that show you?

8 A. That it ranged in between -- let's see  
9 here. I'll tell you.

10 (Witness examined document)

11 A. Not much other than it was made by them  
12 and it ranged -- the prices that I found in between  
13 \$69, \$62 or \$80 a piece for those. It had an  
14 18-channel multiple -- it was an 18-channel power  
15 supply.

16 Q. And how did what you discovered prove that  
17 the power supply that was recovered at the scene of  
18 the fire was not the power supply for the new  
19 surveillance?

20 A. Nothing that I discovered proved that. I  
21 was just told that the one that was there was  
22 self-contained and had its own power supply.

23 Q. All right. So other -- but anything that  
24 you found didn't either prove that it was the power  
25 supply to the new surveillance system or disproved

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1       that it was the power supply to the surveillance  
2       system?

3           A.     No.   There was a -- a -- just like with  
4       the Ion IQ, there's documentation of what was  
5       installed and it doesn't include a COP USA power  
6       supply.

7           Q.     Anything else?

8           A.     No.

9           Q.     Thank you.   Have you ever been told what  
10      happened to the actual surveillance system?   Not the  
11      hard drive.   I'm talking about the actual  
12      surveillance system.

13          A.     The DVR?

14          Q.     Yes, and the cameras and everything.

15          A.     I have no idea what happened to it.   I  
16      asked about it and I was told that it was collected  
17      by Mr. Lacy.   However, it's not in the document -- or  
18      any of the documentation or in the evidence, and so I  
19      don't know what happened to it.

20          Q.     Who told you that Mr. Lacy collected the  
21      actual surveillance system?

22          A.     Mr. Diamantopoulos said he had it in his  
23      hand and that it was his understanding that when he  
24      inspected it, they were collecting it.   That's why he  
25      had asked about how to retrieve the data off of it.

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1           Q.    Okay. And so that we're clear, did Mr.  
2 Diamantopoulos tell you that Mr. Lacy took down the  
3 DVR system that was melted up on the shelf, the  
4 actual system, or did he tell you he had the hard  
5 drive?

6           MR. WIGGINS: We'll I'll object to  
7 melted.

8                 There's no evidence it melted on the  
9 shelf.

10          Q.    (Ms. Daly) Have you seen the photographs  
11 of the DVR system?

12          A.    The one that's left on the shelf, yes.

13          Q.    Yes. And was that melted?

14          A.    Yes, ma'am.

15          Q.    Okay. So you know what I'm talking about  
16 when I say the melted DVR system that was up on the  
17 shelf?

18          A.    Yes.

19          Q.    Okay. So did Mr. Diamantopoulos tell you  
20 that Mr. Lacy took down the melted DVR system and had  
21 that in his hands?

22          A.    What he said was is that he had the DVR  
23 component in his hands at the -- at the front desk or  
24 the -- the -- where the registers were at the  
25 restaurant. And he was talking on the phone with Mr.

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1 Dowlat about how to recover the data.

2 Q. Okay.

3 A. That's what I was told.

4 Q. Okay. So he didn't specify whether or not  
5 it was the hard drives from it or if it was the  
6 system, or he just said the DVR system?

7 A. My understanding was that it was the DVR  
8 component, meaning like your VCR.

9 Q. Uh-huh.

10 A. You have a VCR with the -- a disc drive in  
11 it. It was the whole component.

12 Q. Okay. So it would have been that melted  
13 system that was up on the shelf?

14 A. That was my understanding. Yes, ma'am.

15 Q. And that's what Mr. Diamantopoulos told  
16 you at your initial investigation?

17 A. Initial -- initial interview. Yes, ma'am.

18 Q. Anything else you were told about their  
19 surveillance system?

20 A. No.

21 Q. Were you told what happened to all the  
22 cameras that were on and around the building?

23 A. I wasn't told anything about the cameras.

24 Q. Do you know what happened to them?

25 A. I didn't know anything did happen to them.

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1 Q. Are they still inside the building?

2 A. There were quite a few of them still  
3 there.

4 Q. Okay.

5 A. I don't know if they were all there.  
6 There were still some there when I went.

7 Q. Okay. Anything else about the  
8 surveillance system that you can recall that you  
9 discussed with either Mr. Diamantopoulos, Mr. Wiggins  
10 or anyone else associated with this case?

11 A. No. I think in my notes there's someplace  
12 in there where I talked to Mr. -- I know we talked  
13 about it already -- Chad Royal. He said that he  
14 wasn't sure if he collected it or not. And there was  
15 a comment from Mr. Lacy, I think, when we were at the  
16 joint scene exam -- or evidence exam that's noted in  
17 my notes.

18 And he said that he didn't know if  
19 Detective House had it or not. He was unorganized  
20 and he didn't know if it was still in their evidence  
21 or not. He made that comment.

22 I don't know if that -- I don't recall  
23 whether or not that's -- that -- that's what I have  
24 in my notes, but I don't know whether he has it or  
25 not, Mr. House or Detective House's -- they -- my

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1 understanding provided all of the evidence that they  
2 had.

3 Q. Anything else?

4 A. No.

5 Q. I'd like you to look at number three, the  
6 opinion on Mr. Lacy's report.

7 (Witness examined document)

8 A. All right, what did you want me to answer  
9 that -- on that one?

10 Q. Do you agree with the -- opinion three in  
11 Mr. Lacy's report?

12 A. I agree that it could be that the fire  
13 originated at floor level. But I do not agree that  
14 it's the only possibility based on the patterns that  
15 I observed.

16 Q. And when you say based on the patterns  
17 that you observed, earlier you testified that there  
18 was not enough data for you to determine the -- where  
19 the fire originated.

20 A. Uh-huh.

21 Q. Is that what you're relying on?

22 A. That's -- that's what I'm relying on. And  
23 when I say that, the patterns were not sufficient for  
24 that determination. The patterns that remained were  
25 not sufficient for that determination.

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1           Q.     Is one of the reasons why there is not  
2     enough data for you to make that determination, is it  
3     because the scene -- the fire scene has -- was  
4     changed between January and November?

5           A.     I've looked at the photographs and whether  
6     or not they fully depict exactly what was there, I  
7     don't know that -- that -- I don't know that the  
8     photographs are clear enough for -- for me to have  
9     made any other determination.

10           I've looked at them pretty extensively.  
11     And I don't -- I don't believe that there was any  
12     other pattern that was present at the time of the  
13     first exam that was all that different from when I  
14     looked at it.

15           Q.     Have you reviewed the pictures located --  
16     excuse me -- identified in Mr. Lacy's report under  
17     opinion three?

18           A.     I have reviewed all of the photos that I  
19     was given.

20           Q.     Okay. So let's walk through number four  
21     together, and let's stop after the second sentence.

22           A.     Okay. Do you mind if I hold onto that ---

23           Q.     --- Sure ---

24           A.     --- So I can read it better?

25           (Witness examined document)

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1           A.     Okay, I read the first sentence.

2                         The pattern that he's referring to on the  
3     aluminum cart, is that the one you're ---

4           Q.     --- Yes.

5           A.     Okay.

6           Q.     It says the fire pattern on the side of  
7     the wheeled aluminum storage rack indicates a fire  
8     originating at floor level and spreading horizontally  
9     and vertically in an expected manner.

10                  What evidence do you have to contradict  
11     that statement or to disagree with that statement?

12           A.     Again, I don't know that there's enough  
13     data to actually support that because the primary and  
14     secondary fuel sources I can't identify, except for  
15     the fact that we know we have foam at the top and  
16     plastics along the shelf.

17                  And once they burn and melt, we can have a  
18     very high heat release rate fire at the base of the  
19     cabinet which could create enough heat to melt that  
20     cabinet at its base. And that would be my  
21     explanation for that.

22           Q.     Of why you disagree with that statement?

23           A.     Uh-huh. Yeah. I don't -- it's possible.  
24     What he's stating is possible. I don't believe that  
25     there's -- that it's the only possibility based on

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1 the fuel package.

2 Q. Is it more likely than not that the fire  
3 pattern on the side of the wheeled aluminum storage  
4 rack indicates a fire originating at floor level and  
5 spreading horizontally and vertically in an expected  
6 manner?

7 A. I do not believe that it's more likely  
8 than not, no.

9 Q. Do you believe that it's about a  
10 fifty-fifty shot chance?

11 A. It could go either way. Yes, ma'am.

12 Q. So if I -- if that sentence read it is my  
13 opinion that there's a 50 percent probability that  
14 the fire pattern on the side of the wheeled aluminum  
15 storage rack indicates a fire originating at floor  
16 level and spreading horizontally and vertical in an  
17 expected manner, would you agree with that statement?

18 A. It's possible. I can't -- probable is  
19 greater -- with a greater weight. And I don't know  
20 that there's enough data to say that there's a  
21 greater weight on that.

22 Q. Okay. I didn't say greater. I said 50  
23 percent, so it would be equal.

24 A. It -- it could be either or, yes.

25 Q. Okay. So an equal?

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1           A.     Uh-huh.

2           Q.     It's your opinion that ---

3           A.     --- You -- you asked me if it was more  
4     likely than not, and I don't think that it's more  
5     likely than not.

6           Q.     Right. I understand you said it's not  
7     more likely than not. I said is it a 50 percent,  
8     saying equal?

9           A.     I would say that it's equal.

10          Q.     All right. Mr. Lacy goes on to state that  
11     the fire pattern progresses from the wheeled aluminum  
12     storage rack to the stainless steel wall covering,  
13     between the rear drive-thru window and the front  
14     drive-thru window.

15          A.     Okay.

16          Q.     What evidence do you have that refutes  
17     that fire pattern?

18          A.     Can I read it real quick?

19          Q.     Sure.

20                 (Witness examined document)

21          A.     If I understand what he's stating here,  
22     he's stating that the fire progresses from the origin  
23     to the vertical storage rack, aluminum storage rack,  
24     and then continues down the stainless steel wall  
25     covering.

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1                   Is that -- that's my understanding. If  
2 that's correct then I agree with that.

3                   Q. So you agree with the third sentence in  
4 opinion four?

5                   A. That the fire would progress from that  
6 corner to the storage rack to the wall covering, yes.

7                   Q. The next statement is had the fire  
8 originated on the upper wall to the right of the rear  
9 drive-thru window, the developing fire would not have  
10 caused these patterns.

11                  What evidence do you have to contradict  
12 that opinion?

13                  A. Like I said earlier, it's the fuel  
14 package, orientation and the secondary fuel package.  
15 And it's -- the heat development from that. It could  
16 create the pattern that he's seeing and that is there  
17 from an ignition source higher than floor level.

18                  As far as evidence to support that, the  
19 only evidence is is that there is an item there that  
20 is a potential ignition source, and a fuel source  
21 that's in close proximity. And I believe that it  
22 could have originated anywhere on that -- anywhere in  
23 that level.

24                  Q. Okay. So that I'm clear, is it your  
25 testimony that Mr. Lacy's finding that had the -- had

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1       the fire originated on the upper wall to the right of  
2       the rear drive-thru window, the developing fire would  
3       not have caused these patterns?

4                   Is it your opinion that he is wrong?

5       A.     I'm saying that they could have created  
6       those patterns, but it's also possible that they  
7       wouldn't have created those patterns. I don't know  
8       how it came apart.

9                   I don't know -- all I know is is that we  
10      have a fuel package that if it started up high, that  
11      it could create a fire pattern that he's seeing.

12                  I'm not saying that he's wrong. I'm  
13      saying that it's a possibility that something else  
14      could have happened.

15       Q.     So is it accurate that you're not agreeing  
16      or disagreeing with Mr. Lacy's finding?

17       A.     Yes.

18       Q.     Mr. Lacy states that a fire originating at  
19      or near the ceiling would have caused drop-down fire,  
20      and that did not occur here. Do you -- first, do you  
21      agree that a fire originating at or near the ceiling  
22      would cause drop-down fire?

23       A.     Yes.

24       Q.     Do you agree with Mr. Lacy's finding that  
25      a fire originating in or near the ceiling would have

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1 caused drop-down fire, and that did not occur here?

2 A. I don't think there's enough data to say  
3 that. And the reason why is the shelves are slatted  
4 and they were open, and there's plastics which grip.  
5 And fall-down would not be kept in one level -- in  
6 other words, on the top shelf. It would have  
7 continued to fall and could -- it reached the floor.

8 Q. What evidence do you have to support that  
9 it -- that the pattern was that it dropped down onto  
10 the top rack and then continued to fall?

11 A. The evidence that I have is the fuel  
12 package itself and the shelves themselves. The fuel  
13 can drip through the shelves. There's a fire pattern  
14 at floor level which is puddled plastics. That's  
15 what they are. That's what was on the -- in the  
16 shelves, and that would be the evidence that I have  
17 that would support that.

18 Q. Anything else?

19 A. No.

20 Q. Okay. I'd like you to read opinion five  
21 of Mr. Lacy's.

22 (Witness examined document)

23 Q. Is there anything that you disagree with  
24 about opinion five?

25 A. I disagree with the fact that it's limited

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1 -- limited energy. I don't know that there's enough  
2 information to determine that if he doesn't know what  
3 the -- what amount of energy that particular  
4 appliance would produce if it was burning.

5 It doesn't have to ignite the fiberglass  
6 reinforced wall panels to have a fire with other  
7 secondary fuel package.

8 Q. And you're talking about the -- if it  
9 would have fallen off and ---

10 A. --- Well, the -- they were right next door  
11 to it or next to it -- the foam.

12 Q. The foam. Right?

13 A. The foam, or it could have fallen and  
14 ignited other materials.

15 Q. So is it your theory that it could have  
16 fallen off the wall and hit this fuel source, the --  
17 you know, paper plates, the Styrofoam cups, or that a  
18 fire shot out from this wireless device?

19 Like what is your theory of how -- if you  
20 were -- if you were going to do a model of like, you  
21 know, like a computerized model -- modeling of how  
22 this fire started, what would be your -- this theory?

23 A. My first thought would be that if the --  
24 if the Ion IQ ignited, that radiant heat may ignite  
25 something next to it. That would be my first

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1 thought.

2                   My second thought would be that  
3 potentially it could have fallen and ignited  
4 something else. But I don't have enough information  
5 to say either/or.

6                 Q. So you disagree that the bay station  
7 operates on a limited energy system?

8                 A. No, it operates on a limited energy  
9 system, but I don't believe that -- I can't testify  
10 to whether or not a limited energy system can ignite  
11 that material. And I don't think that Mr. Lacy is an  
12 engineer either.

13                Q. Okay. So the bay station operates on a  
14 limited energy system. You agree with that.  
15 Correct?

16               A. Uh-huh.

17               Q. It is consistent that the limited energy  
18 potential would not be sufficient to ignite the  
19 fiberglass reinforced plastic wall panels as the  
20 first fuel ignited. Do you agree with that  
21 statement?

22               A. I don't know. I don't know how much  
23 energy is produced by that particular appliance when  
24 it burns.

25               Q. So you're neither agreeing or disagreeing

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1 with the statement that the limited energy potential  
2 would not be sufficient to ignite the fiberglass  
3 reinforced plastic wall panels as the first fuel  
4 ignited?

5 A. I don't know. You're right. I'm neither  
6 agreeing or disagreeing.

7 Q. Do you agree that the heat of combustion  
8 from a developing fire, which originated elsewhere,  
9 would provide sufficient heat to ignite the  
10 fiberglass reinforced plastic panels?

11 A. It depends on how much heat that the fuel  
12 source produced. If only one cup ignited, probably  
13 not. If a bunch of cups ignited, yes.

14 Q. Okay. How about the heat combustion from  
15 this developing fire?

16 A. Which developing fire?

17 Q. The one at the scene of the fire. If it  
18 did not start -- you saw the damage that this fire  
19 created. And if it did not start at the wireless  
20 device, was that fire -- that developing fire enough  
21 that it would provide sufficient heat to ignite the  
22 fiberglass reinforced plastic panels?

23 A. I think that at any point on that shelf  
24 once it ignited and your fuel package was burning, it  
25 would ignite the reinforced wall panels, yes.

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1           Q.     Do you agree with the statement that the  
2 products of combustion are lighter than air, thus  
3 rise in the atmosphere?

4           A.     Yes.

5           Q.     Do you agree that when a fire originates  
6 at floor level, the products of combustion rise and  
7 attack all items combustible or non-combustible?

8           A.     Yes.

9           Q.     Do you agree that this type of attack  
10 results in a floor to ceiling pattern as is present  
11 in this fire?

12          A.     As long -- yes. As long as you have  
13 burning material from floor to ceiling, you're going  
14 to get that pattern.

15          Q.     So a new statement. Had the fire  
16 originated at the base station, the floor to ceiling  
17 pattern that is present in this fire would not have  
18 been present?

19          A.     I disagree with that.

20          Q.     Okay. So explain to me the evidence you  
21 are relying on to disagree with that statement.

22          A.     Had a fire originated on the top shelf or  
23 in close proximity to the Ion IQ base station, that  
24 would be your first or secondary fuel package. If  
25 that secondary fuel package continued to burn and

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1 drop down, you would have a -- the whole shelf would  
2 ignite and you could create that pattern.

3 Q. Okay. But had the fire originated at the  
4 base station, so had the fire originated -- that the  
5 wireless device was the origin of the fire, is that  
6 what you just referenced?

7 A. Uh-huh.

8 Q. Okay. So you're saying that the floor to  
9 ceiling pattern that is -- actually, strike that.

10 Do you agree that there's a floor to  
11 ceiling pattern that is present in this fire?

12 A. Yes.

13 Q. Okay. So you do agree with that?

14 A. Yes.

15 Q. Okay. So explain to me how the fire could  
16 have originated at the base station and there be a  
17 floor to ceiling pattern, the various scenarios,  
18 unless it's just the two that you've already covered.  
19 Just that it could have fallen off or radioactive --  
20 what did you call it? Not radioactive.

21 MR. WIGGINS: I hope not.

22 MS. DALY: Strike that.

23 THE WITNESS: Radiant heat transfer.  
24 Radiant heat or direct conductive transfer from the  
25 base station could have ignited surrounding

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1 combustibles.

2                   Like surrounding combustibles, like the  
3 foam products that were there, will burn readily and  
4 they will puddle. They melt first and puddle. They  
5 can drop combustible material to the floor which  
6 would ignite other combustibles in close proximity.  
7 That could create a floor to ceiling pattern.

8                   It could also happen if a portion of the  
9 Ion IQ fell down beside the shelves and ignited  
10 combustible materials at floor level.

11                  Q. (Ms. Daly) Any other theory?

12                  A. No.

13                  Q. Do you agree that the photographs of the  
14 scene illustrate a shadow effect on the wall to the  
15 right of the rear drive-thru window, indicating that  
16 something was mounted on the wall at that location?

17                  A. Yes. It was later identified as the base  
18 station.

19                  Q. Correct. Do you disagree with the  
20 statement that the shadow effect on the wall was  
21 attacked by a developing fire, and the presence of  
22 that item protected the wall surface from further  
23 damage?

24                  A. That is possible, yes.

25                  Q. Okay.

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1           A. I don't disagree with that statement.  
2       What I would say is is that I don't know how long  
3       that item stayed on the wall. I don't know if it was  
4       held there by the shelf. I don't know.

5           Q. Other than what you've already said to me  
6       today, is there any other evidence that you have that  
7       refutes Mr. Lacy's opinion that the base station was  
8       attacked by a developing fire, and that's what caused  
9       the protection -- protected wall surface from further  
10      damage?

11          A. No.

12          Q. Take a moment and read opinion seven.

13           (Witness examined document)

14          Q. Okay, so does your scenario require the  
15       heating and subsequent ignition of a primary fuel  
16       development into open combustion, heat transfer to  
17       secondary fuels, ignition of those secondary fuels,  
18       and then a second phase of fire development that  
19       would cause the fire patterns on the wheeled aluminum  
20       storage rack and adjacent stainless steel wall  
21       covering?

22          A. Yes.

23          Q. Do you agree with Mr. Lacy's finding that  
24       there would have been insufficient time between Mr.  
25       Diamantopoulos leaving the restaurant in the 8:20 to

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1       8:25 range, and the fire being reported at 8:41 for  
2       the ignition and development of both primary and  
3       secondary fuel packages?

4           A.    No, I -- I disagree with that.

5           Q.    And what -- what are you relying on to  
6       disagree with that finding?

7           A.    Well, an open flame ignition source, which  
8       is the theory of Mr. Lacy, developed this fire in  
9       that timeframe. An open flame ignition at the ion IQ  
10      base station could do the same thing.

11                  I don't know what he's basing his  
12      timeframe of 8:00 to 8:05.

13           Q.    Before we get there, when you say there  
14      could have been an open flame at the wireless ---

15           A.    --- Uh-huh.

16           Q.    --- Explain to me how this wireless device  
17      could have had electrical failure that would have  
18      created an open flame.

19           A.    I can't tell you how it failed. I don't  
20      know what the failure modes and mechanisms are of the  
21      item.

22           Q.    Okay.

23           A.    If it failed, I would imagine that it  
24      would ignite a standoff that's in close proximity or  
25      touching the circuit board, which would in turn

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1       ignite combustible materials.

2                   And if that was occurring and it was on  
3       fire, it would be an open flame.

4       Q.     The modes of mechanisms that could have  
5       produced this electrical failure, is that something  
6       you would have to rely on Mr. Stone ---

7       A.    --- Yes.

8       Q.    --- To determine ---

9       A.    --- Yes, ma'am.

10      Q.    If Mr. Stone was unable to determine that,  
11       the modes of mechanism that could have caused an  
12       electrical failure in this wireless base system, what  
13       evidence would you use to determine that there was an  
14       electrical failure?

15      A.    Well, if he was unable to that -- are you  
16       -- okay, if -- are you saying if he's unable to  
17       determine or he's able to eliminate it? Because if  
18       he's unable to determine ---

19      Q.    --- If he doesn't know the modes of  
20       mechanism of this wireless device to even give an  
21       opinion about the electrical components ---

22      A.    --- Uh-huh ---

23      Q.    --- Of this wireless device ---

24      A.    --- Right ---

25      Q.    --- So if he's not even able to do that,

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1 what part of his opinion can you rely on in regards  
2 to whether or not there was an electrical failure of  
3 this wireless device?

4 A. I couldn't, and that's why my cause  
5 determination would be undetermined.

6 Q. And that's because you've ruled everything  
7 else out except for this wireless device. Is that  
8 correct?

9 A. Yes, ma'am.

10 MS. DALY: God bless you.

11 MR. WIGGINS: Thank you.

12 Q. (Ms. Daly) The last statement says the  
13 ignition would have needed to occur between 8:00 a.m.  
14 and 8:05 a.m. in order for your scenario to be  
15 plausible.

16 What evidence do you have that contradicts  
17 Mr. Lacy's finding that the fire would have had to --  
18 the ignition would have had to have started at 8:00  
19 -- between 8:00 and 8:05 a.m.?

20 A. Well, we know it hadn't started at eight  
21 o'clock because it wasn't there at 8:15. And we know  
22 that it wasn't burning at 8:25 because the insured  
23 says that he left then and it wasn't burning. So the  
24 fire would have had to have developed between 8:25  
25 and when it was discovered.

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1                   Secondly, from the timeframe to -- to  
2 arbitrarily provide a timeframe of 8:00 to 8:05, I  
3 don't know what he would base that on. He'd have to  
4 know a lot more about the fuel package and the  
5 ignition location and so forth to develop a fire -- a  
6 -- a fire progression scenario that could actually  
7 provide a timeframe like that.

8                   Q. Anything else?

9                   A. No, ma'am.

10                  Q. Opinion eight. Do you have any evidence  
11 to refute that finding?

12                  (Witness examined document)

13                  A. No. They said they looked at it and  
14 eliminated it. I can't say because I don't know any  
15 more than that.

16                  Q. Opinion nine. Do you have any reason to  
17 disagree with Mr. Lacy's finding in number nine?

18                  (Witness examined document)

19                  A. As far as their -- them saying that they  
20 eliminated on January 26, 27th and 30th, that would  
21 be up to Mr. Martini.

22                  As far as November 16th through the 29th  
23 -- and the 29th of November, I did not find any  
24 source of ignition so I would agree with that.

25                  Q. Number 10.

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1                   (Witness examined document)

2                   A. I agree.

3                   Q. Number 11. Do you agree with everything  
4 found in that finding?

5                   (Witness examined document)

6                   A. I agree.

7                   Q. Have you ever spoken to Mr. Cavarock  
8 regarding his opinions in this case?

9                   A. No.

10                  Q. Do you know whether Mr. Cavarock believes  
11 this fire was incendiary or electrical in nature?

12                  A. I don't.

13                  Q. Number 12.

14                  (Witness examined document)

15                  A. No, I agree.

16                  Q. Number 13.

17                  (Witness examined document)

18                  A. I agree.

19                  Q. Number 14.

20                  A. That's what the -- the notes from Mrs.  
21 Locklear and from Mr. Lacy's report indicate. I have  
22 not interviewed them.

23                  Q. You have not interviewed them?

24                  A. No.

25                  Q. Okay. Number 15.

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1                   (Witness examined document)

2                   Q.     Any reason to disagree with number 15?

3                   A.     No.    I saw it in the photograph on January  
4     30th.   It was present.

5                   Q.     Number 16.

6                   (Witness examined document)

7                   A.     The only thing that -- that I've noted  
8     about this that's different is that I believe there  
9     was a claim for damage, or that there were some  
10   damaged electronic components at that point.

11                  So as far as stating it didn't affect the  
12   business, I don't know if that's accurate, but  
13   otherwise, I agree.

14                  Q.     Is there anything that -- about that  
15   incident that you believe impacted this fire?

16                  A.     No, ma'am.   And I think we've talked about  
17   17 already.

18                  Q.     So you agree with ---

19                  A.     --- I don't see the discrepancy because  
20   I've been able to review the video now.

21                  Q.     Right.

22                  A.     Like I said earlier, the only thing I  
23   disagree with on that is the inappropriate use of  
24   process of elimination is when you don't have a  
25   clearly defined origin area.   And as I said, the

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1 clearly defined origin area provided by Mr. Lacy is  
2 floor level only, and I don't know that there's  
3 enough data to support that.

4 Q. If Mr. Lacy relied on an electrical  
5 engineer, in this case Henry Martini's finding that  
6 there was not an electrical ignition source to this  
7 fire, would that be appropriate?

8 A. Yes.

9 Q. Have you had an opportunity to review Mr.  
10 Martini's expert report?

11 A. Yes, ma'am.

12 Q. I'm going to walk through his opinions. I  
13 understand you're not an electrical engineer or a  
14 mechanical engineer, but I would like to know if you  
15 have any basis to contradict Mr. Martini's findings.

16 Let's start with number one.

17 (Witness examined document)

18 A. I agree.

19 Q. Number two.

20 A. I agree.

21 Q. Number three.

22 A. It would be up to Mr. Stone to discuss  
23 that.

24 Q. Number four.

25 (Witness examined document)

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1           Q.     Let's go back to number three.  Is that  
2 because you're not qualified to render an opinion on  
3 whether there was evidence of an electrical failure  
4 identified in and around the area of fire of origin  
5 that could have served as an ignition source for the  
6 fire?

7           A.     Yes, ma'am.

8           Q.     Number four.

9           A.     I would agree with that.  Mr. Stone has  
10 indicated he saw nothing.

11          Q.     Number five.

12          A.     I would agree with that.

13          Q.     Number six.

14          A.     Whether they were -- it's going to be up  
15 to Mr. Stone to deal with that.  They certainly were  
16 not there on November of 2012.

17          Q.     Do you have any evidence to contradict  
18 number six?

19          A.     That they were not eliminated, or that  
20 they were eliminated?

21          Q.     Right.

22          A.     Like I said, it's going to be up to Mr.  
23 Stone.

24          Q.     Up to Mr. Stone, okay.

25          A.     Right.

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1           Q.    I just want to make sure that you don't  
2 have an opinion on that.

3           A.    Huh-uh.

4           Q.    So that the record is clear, do you have  
5 an opinion on that?

6           A.    About -- about whether ---

7           Q.    --- About the finding in number six, that  
8 the current circuit boards were eliminated, or is  
9 that Mr. -- for Mr. Stone to opine?

10          A.    We discussed this earlier about what steps  
11 would have to be taken, and that's going to be up to  
12 Mr. Stone. I can only tell you what I have  
13 experienced in the past.

14          Q.    Thank you. We will not go through that  
15 again.

16                 Number seven.

17          A.    I would -- again, I think we've been  
18 through this. My only disagreement for that is is  
19 that when we talk about that protected area on the  
20 wall, I don't know for sure how it came apart, and  
21 whether or not there was a portion that stayed on the  
22 wall through any timeframe during the fire that could  
23 help create that pattern.

24                 I do agree that it -- he -- he -- and my  
25 statement is is that it's the only source of

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1       electrical ignition that has not been eliminated.

2       That's my statement.

3           Q.     Do you agree that a well defined area of  
4     origin more likely than not will result in an area of  
5     greater fire heat damage than a protected area?

6           A.     We talked about that a few minutes ago  
7     too, about whether or not I could give you a  
8     percentage as to whether a protected area would, and  
9     I can't.

10          Q.     You said it's more likely than not, but  
11    you can't give me a percentage?

12          A.     It is more likely. On most occasions you  
13    would expect that, yes.

14                   MS. DALY: Let's go off the record.

15                   (2:52-2:57 p.m. - recess)

16          Q.     (Ms. Daly) Mr. Booth, do you know whether  
17    Mr. Small was given the expert reports of Mr. Lacy  
18    and Mr. Martini in this case?

19          A.     I'm unaware.

20          Q.     Were you taught during your training that  
21    low voltage devices generally cannot be the ignition  
22    sources for fires?

23          A.     Earlier on, yes. But through I guess the  
24    past seven or eight years I have been told otherwise.

25          Q.     By?

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1           A.    Mark Cassell from LWG Consulting. His  
2 comment to me was you have a mini Maglite in your  
3 pocket and it's three volts of DC current, and it  
4 produces -- the filament on the bulb produces 5,000  
5 degrees. And that under the right circumstances  
6 could cause a fire. And that that it would be a  
7 concern when dealing with a low voltage piece of  
8 equipment. But of course, I'm not qualified to  
9 eliminate him. That's why I hire him or someone  
10 else.

11           Q.    Do you agree that low voltage devices  
12 generally cannot be ignition sources for fires?

13           A.    They're designed as such. Yes, ma'am.

14           Q.    Would you agree that would be very rare  
15 for a low voltage device to be the ignition source  
16 for a fire?

17           A.    I don't know that I can say that. A lot  
18 of -- there are fires that are undetermined, lots of  
19 them that are undetermined because items can't be  
20 eliminated.

21                   And it would be very possible that some of  
22 those are from low voltage appliances that have been  
23 thought of as impossible as ignition sources, and  
24 which we may not know. And so I can't say whether  
25 it's highly unusual or that it doesn't -- or it --

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1 very rare.

2 Q. How many cases have you worked on in your  
3 experience that relate to fire investigation?

4 A. Okay. Restate that, please.

5 Q. How many fire investigations have you been  
6 a part of?

7 A. Approximately 1,500.

8 Q. And of those 1,500 ---

9 A. --- Uh-huh.

10 Q. --- Have you ever been involved in a fire  
11 investigation where it was determined that a low  
12 voltage device was the ignition source for the fire?

13 A. Well, 12 volts of DC is a lower voltage  
14 and so, yes -- automobiles.

15 Q. Anything lower than that?

16 A. Not that I can recall.

17 Q. You said you found this one article  
18 written by Mr. Small. Did you find any other  
19 articles that were contrary to Mr. Small's opinion?

20 A. No. I found one other article that kind  
21 of echoed the -- the studies that he's made, or that  
22 he's had. Although, it's my understanding, and, of  
23 course, I'm not in that circle, that there are very  
24 few studies about low voltage equipment that -- like  
25 the one he's done.

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1           Q.     Do you know whether Mr. Small's opinion  
2     that low voltage devices can be the ignition source  
3     of fires? Do you know whether that is an accepted  
4     principle within the engineering field?

5           A.     I don't know.

6           Q.     A few wrap up questions. Have you ever  
7     worked with any other attorney with the McCoy Wiggins  
8     firm?

9           A.     No.

10          Q.     Is this the first case you've had with  
11    them?

12          A.     Yes, ma'am.

13          Q.     After going through all the evidence in  
14    this case, have you had any thoughts that Mr.  
15    Diamantopoulos started this fire?

16          A.     Like I said in the beginning, it was a  
17    consideration from the beginning. I just don't know  
18    that there's enough data to say either way.

19                 And then we have two potential  
20    possibilities that are equally weighted and they  
21    should -- if that's the case, then it should be an  
22    undetermined fire.

23          Q.     Is it your opinion that it is more likely  
24    than not that Mr. Diamantopoulos did not start this  
25    fire?

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1           A.     No.

2           Q.     Is it your opinion that the wireless  
3 device started -- strike that.

4                 Is it your opinion that it is more likely  
5 than not the wireless device was the ignition source  
6 for this fire?

7           A.     No.

8           Q.     Have you ever spoken to anyone, including  
9 the attorneys in this case, regarding whether or not  
10 Mr. Diamantopoulos was involved in the setting of  
11 this fire?

12          A.     Well, I mentioned to them that it was a  
13 possibility, but other than that, no.

14          Q.     Did they talk to you about whether or not  
15 they considered it to be a possibility?

16          A.     I think that -- that at the time we  
17 discussed it I -- I mentioned that it -- they needed  
18 to be -- in the beginning I told them that they  
19 needed to be aware that if I felt like it was a set  
20 fire, I was going to tell them that.

21                 I also told them that -- that the  
22 timeframes and the circumstantial information that  
23 was there were -- -- were -- weren't great. And that  
24 -- that it is a possibility that we have two possible  
25 potentials.

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1           Q.     Can you rule out the fact that Mr.  
2 Diamantopoulos started this fire?

3           A.     No, ma'am.

4                   MS. DALY: And I don't have any  
5 further questions. Thank you.

6                   THE WITNESS: Okay.

7                   MR. WIGGINS: I have just a couple  
8 questions and I'll be through.

9                   EXAMINATION

10          BY MR. WIGGINS:

11          Q.     Mr. Booth, you testified in this case  
12 concerning the fire -- extensively concerning the  
13 location of the Ion IQ in the restaurant. Is that  
14 correct?

15          A.     Yes, sir.

16          Q.     And when you visited the restaurant for  
17 the first time in what, November 2012?

18          A.     Yes, sir.

19          Q.     Was that -- was that Ion IQ present in the  
20 -- in the restaurant?

21          A.     No, sir.

22          Q.     Did you ever learn or did anyone ever tell  
23 you what happened to it?

24          A.     No.

25          Q.     And did you discuss that with -- with Mr.

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1 Lacy?

2 A. Yes.

3 Q. And Mr. Lacy -- what did he tell you when  
4 you talked to him about it?

5 A. He said that he didn't have it and he  
6 asked whether or not I knew whether it was in the  
7 area of origin or not.

8 Q. Which indicated he did not know whether or  
9 not it was in the area of origin.

10 A. Well, it would seem that he didn't know  
11 where it was.

12 Q. Okay. Did you ever discuss that with SBI  
13 -- the SBI agent, Mr. Royal?

14 A. I did.

15 Q. Did he tell you whether or not he had  
16 discussed it with Mr. Lacy?

17 A. He said that he had.

18 Q. And did he tell -- did he say that he told  
19 Mr. Lacy where he found it?

20 A. Yes.

21 Q. And did he have photographs showing where  
22 he found it?

23 A. He did.

24 Q. Did you review the photographs?

25 A. I did.

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1           Q.     And did you review those photographs at  
2 his office -- or from his computer?

3           A.     Yes.

4           Q.     And did you recognize what the device was  
5 when you saw it?

6           A.     No, I did not.

7           Q.     Did he -- did Mr. Royal, SBI Agent Royal  
8 know what it was when he saw it?

9           A.     No.

10          Q.     At the time that you saw it is it your  
11 testimony that neither you nor Agent Royal knew what  
12 it was?

13          A.     That's correct.

14          Q.     And when did you first learn that it was  
15 an Ion IQ communication device in the restaurant?

16          A.     It was later on after receiving the  
17 photographs from Mr. Lacy and Mr. Martini.

18                 In seeing the item on the table, we were  
19 able to -- with the understanding that that item was  
20 an Ion IQ or one was in that area, we were able to  
21 compare it with the photographs that were provided to  
22 us and to the owner's manual, that they reasonably  
23 appeared to be the same.

24          Q.     When was the first time that you learned  
25 that Mr. Lacy and Mr. Martini had looked at that Ion

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1 IQ device and had ruled it out as an ignitable source  
2 for this fire?

3 A. Well, their initial reports indicated they  
4 had eliminated all electrical and mechanical sources  
5 of ignition. However, I don't -- it's my  
6 understanding they didn't know what it was until  
7 after it was identified by I think it was Mr.  
8 Diamantopoulos, and his -- was it -- in his  
9 deposition was what was -- in one of the report.

10 Q. And you talked to Mr. Dowlat about it on  
11 one occasion, did you not?

12 A. Yes, that's correct.

13 Q. And Mr. Dowlat explained to you how it  
14 worked and what it was for?

15 A. Well, he told me that it was -- it was the  
16 intercom for the drive-thru.

17 Q. Okay. Did he indicate to you that he had  
18 installed that system for Mr. Diamantopoulos?

19 A. Yes.

20 Q. And was he able to give you, and did he  
21 give you the receipt where it had been purchased by  
22 him, and installed at the restaurant, that is the  
23 Miami Subs restaurant?

24 A. He didn't give it to me, but it was in the  
25 documents that were provided.

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1 Q. You don't know the source of that?

2 A. Not right at the moment. I believe that  
3 they were with Mr. Jezierski's documents, and would  
4 have been part of what was provided to him during the  
5 claims process.

6 Q. Is there -- is there a National Fire  
7 Protection Association code that is applicable to  
8 investigation of fires?

9 A. It's a guideline, yes.

10 Q. Some portions are accepted as being  
11 gospel, have they not?

12 MS. DALY: Objection.

13 Q. (Mr. Wiggins) Well, you're familiar with  
14 the fact that it's pretty much accepted in the  
15 industry, is it not?

16 A. It's an accepted guide in the industry,  
17 yes.

18 Q. And do all, or most all investigators,  
19 origin and fire investigators, comply with -- with  
20 that National Fire Protection Association guidelines?

21 MS. DALY: Objection to form.

22 Q. (Mr. Wiggins) If you know.

23 A. And -- and all of the fire investigators  
24 that I know use it as a guideline.

25 Q. Okay. Did you read Mr. Lacy's report?

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1           A. I did.

2           Q. Did he indicate that he followed the  
3 National Fire Protection Association guidelines in  
4 his investigation of this fire as the cause and  
5 origin investigator?

6           A. It does say that on his report.

7           Q. Okay. Did he comply with those  
8 provisions, in reference to the Ion IQ I have  
9 referenced particularly to.

10           MS. DALY: Objection to form.

11           THE WITNESS: The only thing that I  
12 have seen is that an item of interest that should be  
13 considered was not collected as an item of the  
14 evidence.

15           Q. (Mr. Wiggins) And would he -- would you  
16 as an investigator, had you been the one who had  
17 found this Ion IQ communication device, what would  
18 you have done with it as an investigator?

19           A. I would have stored it.

20           Q. Would you have tagged it?

21           A. Yes.

22           Q. And you would have known that had you  
23 identified it that somebody else may come behind you  
24 and want to look at it to identify that device, and  
25 determine whether or not it had anything to do with

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1 the cause of the fire?

2 MS. DALY: Objection.

3 THE WITNESS: There are times when  
4 items are sufficiently documented by photographs.  
5 But then there are times when there are items that  
6 cannot be sufficiently documented by one or two  
7 photographs without doing a more thorough  
8 examination.

9 If it is an item that I believe,  
10 personally believe will take further examination  
11 other than visual examination of field, I would  
12 believe -- I would take it as evidence.

13 Q. (Mr. Wiggins) What if even you decided in  
14 your own mind it was not a cause of the fire, what  
15 would you have done as an investigator, as a cause  
16 and origin investigator?

17 A. If it was something that I did not believe  
18 could be easily examined and documented, it would be  
19 -- and I would be concerned of an alternative theory,  
20 then I would collect the item so that it could be  
21 examined by anyone that might have an alternative  
22 theory.

23 Q. Did you ever ask Mr. Lacy if he knew what  
24 had happened to the Ion IQ system -- device?

25 A. He said that he didn't have it.

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1           Q. And that was the first time that you were  
2 aware of it was in November 2012?

3           A. The first time that ---

4           Q. --- That you were ---

5           A. --- Aware that he didn't have it?

6           Q. Right.

7           A. No. The first time I was aware that he  
8 didn't have it was when I talked to him on the phone  
9 about the evidence exam, and asked him for an  
10 evidence list.

11                  The comment that I made to him at the  
12 joint scene exam on November 16th was that I asked  
13 him if he placed the manufacturer of the headset on  
14 notice. But in -- on April the 11th of 2013, at four  
15 o'clock I called Mr. Lacy. And he called back and  
16 advised that there was no protocol. He told me that  
17 he wanted -- I told him that we wanted an evidence  
18 list. And he advised he had plastic cups, debris  
19 samples, and John Cavarock had branch circuitry and  
20 receptacles.

21                  I asked about the circuit board and the  
22 SBI photographs, and he said he had -- he said no. I  
23 asked if he knew if -- if it was from the intercom or  
24 not -- he asked me that, if I knew if it was from the  
25 intercom or not, and I said I wasn't sure because I

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1 hadn't seen it, but it was in the SBI's photographs.

2 So that would have been April the 11th  
3 when I first found out that it was not in his  
4 possession.

5 Q. And was that your only discussion that you  
6 had with Mr. Lacy concerning that device?

7 A. Concerning that device, yes.

8 Q. In developing the hypotheses concerning  
9 the fire, Mr. Booth, in that process did you consider  
10 anything other than the evidence that you find during  
11 the course of your actual investigation on-site?

12 That is, do you consider any extraneous  
13 materials or information other than what you're doing  
14 as far as your investigation is concerned?

15 MS. DALY: Objection to form.

16 Q. (Mr. Wiggins) Do you understand what I'm  
17 talking about?

18 A. I do. Once a cause and determination --  
19 determination is made, other indicators are utilized  
20 to support a cause determination. So after a -- I  
21 would use physical evidence and evidence at the scene  
22 and circumstances surrounding the incident to form an  
23 opinion regarding the cause and origin of the fire.

24 The other information, circumstantial  
25 information and so forth, is outside of the origin

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1 and cause determination.

2 Q. And is it your testimony here today that  
3 -- that based upon your investigation that you --  
4 that you would have developed two hypotheses  
5 concerning the origin of this fire?

6 A. Yes.

7 MS. DALY: Would you repeat that  
8 question back?

9 (Next-Previous question was read back)

10 MS. DALY: Thank you.

11 Q. (Mr. Wiggins) And what were those -- what  
12 would those two hypotheses have been?

13 A. The hypotheses would be that this was an  
14 incendiary fire or that potentially an Ion IQ  
15 failure.

16 Q. And, therefore, you would have -- you had  
17 -- you would have made the decision that the cause  
18 was undetermined -- could not be determined?

19 A. If the Ion IQ was in my presence and it  
20 could be eliminated, potentially I would not have  
21 made the same determination. Because we don't have  
22 it to look at and it cannot be examined, then yes,  
23 that would be my determination, that it was  
24 undetermined.

25 MR. WIGGINS: That's all I have.

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1 Thank you.

## EXAMINATION

3 BY MS. DALY:

4 Q. You stated earlier that you would have  
5 collected the base station.

6                   Would you have collected the base station  
7   in order for an engineer to examine it?

8 A. Yes, ma'am.

9                   Q.     Is there any discussion with Terry Lacy  
10    that you have not told us about today?

11 A. No.

12 MS. DALY: I don't have any further  
13 questions. Thank you.

14 MR. WIGGINS: Thank you very much.

15 THE WITNESS: Okay.

16 WHEREUPON ,

17 at 3:19 o'clock p.m. the deposition was adjourned.

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## 1 CERTIFICATE OF TRANSCRIPT

2 I, Cassandra J. Stiles, Notary Public in  
3 and for the County of Forsyth, State of North  
4 Carolina at Large, do hereby certify that there  
5 appeared before me the foregoing witness;

6 That the testimony was duly recorded by  
7 me, reduced to typewriting by me or under my  
8 supervision and the foregoing consecutively numbered  
9 pages are a complete and accurate record of the  
10 testimony given at said time by said witness;

11 That the undersigned is not of kin nor  
12 associated with any of the parties to said cause of  
13 action, nor any counsel thereto, and that I am not  
14 interested in the event(s) thereof.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand this the 18th day of August, 2013.

17 Cassandra J. Stiles, CVR  
18 Certified Court Reporter  
19 Atlantic Professional Reporters  
20 Post Office Box 11672  
21 Winston-Salem, NC 27116-1672

22  
23  
24  
25

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## 1 CERTIFICATE OF OATH

2 I, Cassandra J. Stiles, Notary Public in  
3 and for the County of Forsyth, State of North  
4 Carolina at Large, do hereby certify that there  
5 appeared before me the foregoing witness;

6 That the witness personally appeared  
7 before me at the date, time and location hereon  
8 captioned and was personally sworn by me prior to the  
9 commencement of the proceeding in the matter hereon  
10 captioned.

11 IN WITNESS WHEREOF, I have hereunto set my  
12 hand this the 18th day of August, 2013.

13 Cassandra J. Stiles, CVR  
14 Certified Court Reporter  
15 Atlantic Professional Reporters  
16 Post Office Box 11672  
17 Winston-Salem, NC 27116-1672

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## WITNESS CERTIFICATION

2

I, STEVEN C. BOOTH, hereby certify:

3

That I have read and examined the contents of  
the foregoing testimony as given by me at the time  
and place hereon indicated, and;

6

That to the best of my knowledge and belief,  
the foregoing pages are a complete and accurate  
record of all the testimony given by me at said time,  
except as noted on the Attachment A hereto.

10

I have \_\_\_\_ have not \_\_\_\_

11

made changes/corrections \_\_\_\_\_

12

Steven C. Booth

13

I, \_\_\_\_\_, Notary Public for the  
County of \_\_\_\_\_, State of \_\_\_\_\_,  
hereby certify:

16

That the herein-above named appeared before me  
this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and;

18

That I personally witnessed the execution of  
this document for the intents and purposes as herein-  
above described.

21

\_\_\_\_\_

Notary Public

23

My Commission Expires:

24

\_\_\_\_\_

( SEAL )

25

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1 ADDENDUM A

Upon reading and examining my testimony as  
herein transcribed, I make the following additions,  
changes and/or corrections, with the accompanying and  
corresponding reason(s) for the same:

6

7 Page Line Is Amended to Read

8 \_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_

9 \_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_

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Stephen Edward Stone

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## CERTIFICATE OF MAILING

2

I, Cassandra J. Stiles, CVR, do hereby certify  
that a true copy of the transcription of the matter  
hereon captioned was served on the party named below  
by the placement of said transcript copy in the  
United States Mail, Priority Mail delivery, with  
proper postage affixed, addressed as follows:

8

9

10 Steven C. Booth

11 Post Office Box 1227

12 Morehead City, NC 28557

13

14

15 This the 19th day of August, 2013.

16

17

18

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19 Cassandra J. Stiles, CVR

20

21

22

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